Nigeria Investors' Roadmap

Draft Report

Prepared for: **United States Agency for International Development (USAID)**

Prepared by: **Pricewaterhouse Coopers L.L.P. (Prime Contractors)**
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(Technical Contractors)
The Foreign Investment Advisory Service (FIAS)

Sponsored by: **Support for Economic Growth and Institutional Reform**
General Business, Trade and Investment
Contract No. PCE-I-00-98-00017-00
Task Order No. 825

July 2001

PRICEWATERHOUSECOOPERS

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Prepared for: **United States Agency for International Development (USAID)**

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Sponsored by: **Support for Economic Growth and Institutional Reform (SEGIR)**
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Executive Summary

Introduction

In order to attract and facilitate foreign investment in Nigeria, USAID has commissioned an Investor's Roadmap. The Roadmap discusses and analyses four (4) main areas of the commercial and industrial infrastructure: Business Registration, Locating, Employing, and Import/Export Procedures. The report also thoroughly examines the role of the rule of law in commercial dispute resolution, and reviews Nigeria's fiscal environment and taxation system. The Roadmap seeks to guide the Nigerian Government in reforming and reengineering its legislative and regulatory systems. The Roadmap also provides guidance on reforming commercial, business, and foreign investment procedures to provide a more flexible, user-friendly environment for investors and relevant government agencies.

This report presents a diagnosis of the aforementioned areas along with reform/re-designing recommendations to establish efficient, transparent, low-cost procedures and regulations. Report recommendations also promote the rule of law to provide a legislative basis and legitimize these procedures and regulations.

The consultants find that government agencies' pervasive command-and-control attitude and tendency to protectionism inhibits foreign direct investment. Investment procedures are generally inefficient, non-transparent, complex, and lengthy. Furthermore, the high cost of certain procedural steps, along with vague regulations and laws permit "unofficial behaviour" and payments. Following is a summary of key findings.

Chapter 1. Business Registration

Chapter 1 focuses on the various procedures required of a private firm to register in Nigeria: including registering as a legal entity; registering with the statistics and relevant taxation authorities; obtaining locally issued business licenses and permits; and obtaining investment incentives.

Investors must first register with the Corporate Affairs Commission to incorporate the business. Requiring numerous steps and many forms, this process is expensive and time-consuming. Moreover, the agency's staff is inadequately trained. The investor must also complete Business Registration with the Nigerian Investment Promotion Council. NIPC operations are inefficient, and procedural guidelines are incomplete. The NIPC registration process is redundant and unnecessary; the agency should instead provide business facilitation and advisory services. Investors also apply to the NIPC for investment incentives. Nigeria's incentive acquisition regime and process are complicated and cumbersome, resulting in an under utilized tax incentives program. The process operates under a non-transparent approval process. In addition to these three processes, investors must also apply for a Business Premises Permit from state-level authorities. This process includes registration with the state tax authorities. Again, there are few if any written guidelines for state-level registration. Moreover, the process presents the investor with an additional delay in commencing business operations.

Overall, the consultants' findings indicate that business registration in Nigeria is inefficient, complex, lengthy, and costly.

Chapter 2. Locating

Chapter 2 focuses on the various administrative aspects of locating a company in Nigeria. These processes include acquiring and registering rights to land, obtaining site development and building permits, arranging utility connections, and complying with environmental impact mitigation legislation.

The locating process is largely the purview of state governments, who is responsible for land allocation and transfer, as well as (in most states), site development approvals. The federal government is responsible for environmental issues and utilities provision. Local Government Councils have jurisdiction over: Collection of various housing & tenement levies and rates; construction of roads and streets; and sewage. While the consultants did not locate the legislative basis for these powers, Local Government Councils also appear to have jurisdiction over other locating-related matters, including the use of land outside townships as well as ground and industrial rates, certificate of occupancy (C of O) issuance, property health and safety matters, sanitation and the environment, and public utilities provision.

The administrative locating processes are thus truly federal in nature and, as a result, vary in terms of their specifics depending upon the location of one's investment. Nevertheless, it is fair to state that, regardless of one's investment location, the administrative process related to "locating" are generally inefficient, non-transparent, slow, and expensive throughout Nigeria.

Chapter 3. Employing

Chapter 3 focuses on the various norms and procedures relating to securing investor and expatriate entry and work permits, labor registration, employee income tax registration and P.A.Y.E. obligations and finally labor norms, enforcement and dispute resolution mechanisms.

Overall, employment is an area of concurrent state-federal jurisdiction under Schedule II of the Nigerian Constitution. The consultants' analysis of the employing-related processes in Nigeria paints a mixed picture of efficient and inefficient procedures: complexity and lack of transparency in some areas and flexibility and liberal regulation in others. Nigeria should shed the remnants militaristic, command-and control approaches to regulation, protectionist and "closed-nation" attitudes regarding foreign investment. Moreover, Nigeria should remedy outdated social policies, thereby embracing its own fundamentally liberal and progressive instincts. A series of specific recommendations will be offered throughout this chapter on a procedure-by-procedure basis.

Chapter 4. Import and Export

Chapter 4 focuses on import/export procedures for companies located in a couple of the country's free zones, and for companies located outside of the zones. In this chapter, the consulting team also discusses Nigeria's export incentive programs: the Manufacture-in-Bond Scheme and the Duty Drawback Scheme.

Overall, Nigerian customs and port procedures appear fairly rational. Many international practices have been, at least partially, adopted in practice, including Kyoto and ASYCUDA norms, SGDs, and selective verification.

A number of inefficient, uncompetitive, and antiquated practices nevertheless subsist, including: A lack of information and transparency, resulting in extra-legal behavior;

and poor, equipment, facilities, and official pay. As a result, counting wait-time for berths, ports and customs clearance timelines of well over a month remain commonplace, in spite of official comments to the contrary.

The situation in Nigeria's free zones, while somewhat better, is nevertheless still hampered by dealings with Port Customs and NPPLC officials, with resulting clearance times of 1-2 weeks on average.

Nigeria's export incentives programs, for their part, are simple and straightforward in theory. Unfortunately, they apply only to the manufacturing sector, status takes years to acquire due to poor implementation, and information on the programs is poorly disseminated.

Chapter 5. Resolution of Commercial Disputes

Chapter 5 discusses and analyzes the establishment of the rule of law and provides recommendations that would enable it to act as a fundamental enabling condition for the attraction of foreign investment. While Nigeria's commercial disputes resolution system is composed of indigenous, Sharia, and "received" Courts, there are a few problems in terms of dueling decisions, appeals, and rules of court. Judicial accountability, access to legal services, and access to case law are likewise all also improving. However, the system remains hobbled by extremely slow case processing, a lack of practitioner specialization in commercial law topics, and infant alternative dispute resolution mechanisms.

Chapter 6. Taxation

Finally, chapter 6 provides an overview of fiscal federalism in Nigeria and of the Nigerian taxation system in general the state-level monthly income tax payment and annual income tax filing processes because investors must typically complete these processes on behalf of their employees. It finally takes a cursory look at local government taxation.

While centrally coordinated to some degree, Nigeria's system is one of fiscal federalism, with federal, state, and local government taxes and roles, as well as transfer payments known as "Federal Allocation Allowances."

The system is relatively reasonable and competitive by design, both in terms of fiscal pressures and tax administration procedures. The monthly payment and annual filing of employee income taxes, for instance, appears neither particularly difficult nor cumbersome.

However, state auditing and collection practices are also less than ideal, while local government taxation and collection practices are, to all intents and purposes, predatory. Overall, the system remains relatively opaque. Corruption exists both in terms of transfer payment misappropriation and in incentives administration. Clearer and more transparent systems, as well as better information dissemination, will be critical to improving this situation.

Introduction

Project Background, Objectives, and Methodology

Investor roadmaps have proved useful in many countries around the world in identifying barriers to trade and investment and, in general, to increasing the efficiency of the economy. Often, government policies, regulations, and procedures are identified as posing serious problems to accomplishing national economic growth objectives. The Roadmap exercise is a participatory process in which local information is assembled and "benchmarked" against that of other economies. The Roadmap is then utilized by local leaders (generally the MOF or the Office of the President) to spark a local dialogue on the identified barriers and to begin to prioritize actions to remove the most significant ones. In Nigeria, this exercise aims to identify constraints to investment and recommend policy and procedural changes to be undertaken.

This Draft Roadmap Report aims to accomplish the five (5) following results:

1. Identify the main constraints that face existing and potential foreign investors in the country;
2. Examine key policy elements that are likely to influence the location decision of foreign investors;
3. Assess the legal and institutional framework for FDI, including the "customer interface" and the ease of interacting with the process;
4. Offer a preliminary review of the main administrative barriers that investors face in Nigeria; and
5. Propose a series of recommendations for improving the investment climate in Nigeria.

The final Nigeria Investor Roadmap aims to accomplish the following:

1. Develop a comprehensive report, detailing step-by-step all the application requirements that an investor must fulfill to become fully operational;
2. Identify existing bottlenecks and inefficiencies, and to make recommendations on how best to streamline them;
3. Analyze other factors impacting the investor that result from the legislative environment;
4. Compare Nigeria with its regional competitors by benchmarking its practices with regional best practices;
5. Identify procedurally oriented resource constraints within selected government agencies and create implementation plans for fomenting positive change; and
6. Raise awareness in the business community and society at large of the need for regulatory reform and improvement in government services.

The Investor Roadmap is a diagnostic and change management tool that explores the policy reform at the "second tier," implementation level. Ultimately, the Investor Roadmap is a means to facilitate positive change in a given country's regulatory regime and help spur the creation of formal sector employment and income growth. The Investor Roadmap's focus on procedural and regulatory barriers to investment and trade

illustrates how various government policies and actions affect the international competitiveness of both local and foreign investors.

The Roadmap enables an investment promotion agency to guide investors through the process of setting up a firm and present an accurate picture of the costs and time required. By publicly disseminating how a given procedure should work, the Investor Roadmap also helps in efforts to curb corruption caused by a lack of transparency. The Roadmap document presents an analysis the issues of concern to the private sector, organized by process groups, and offers concrete recommendations for implementing positive change. The Roadmap's detailed analysis of procedures helps expose the root causes of bureaucratic bottlenecks and provides insight into practical solutions guided by principles of international best practice. The exercise of conducting an Investor Roadmap builds consensus on the problems that exist in the current regulatory regime. The Investor Roadmap seeks to change the perspective of public officials by presenting the investor as the "customer" of their agency-specific and collective government services. By looking at the provision of government services from an external point of view, civil servants are sensitized to the particular needs of the investor and gain a new appreciation for their role in either helping or hindering investment and why businesspeople and the public want increased transparency, efficiency, responsiveness, and speed from the government.

This Draft Report follows a preliminary FIAS diagnostic report, entitled "Nigeria: Joining The Race For Non-Oil Foreign Investment," produced for the NIPC and the Ministry of Commerce and submitted in December 2000, as well as presentations during two Workshop seminars, held on the 29th and 31st of January 2001, which gathered approximately 70 public and private sector representatives under the aegis of the National Economic Summit Group (NESG), USAID, the World Bank Group, and the Ministry of Commerce and Industry of Nigeria. By design, this Report represents a second, deeper, cut at ways of improving the investment environment in Nigeria. The Report's recommendations propose possible approaches to overcoming the key impediments guided by best practice elsewhere. Indeed, the findings regarding the investment environment are considered in the light of international experience and best practice, and recommendations made on how Nigeria might improve its performance in policy and procedure. The recommendations should serve as an input to the formulation, by the government and private sector of Nigeria themselves, of prioritized action plans and a reform agenda.

The full Roadmap research began in February 2001, during which period a team of three Local Consultants partnered with three Expatriate Consultants to conduct field research. During their time on the ground in Nigeria, the TSG Nigeria Investor Roadmap Team conducted comprehensive research throughout the country. The team interviewed numerous public and private sector representatives, gathered significant documentation on the investment process, and collected any available data and materials regarding the investment environment in Nigeria.

The TSG/PwC/FIAS consulting team was particularly concerned with conducting research in a geographically representative sample of Nigeria's 36 States and territories. The team was also concerned that the sample enable the consultants to at least sample the issues faced by investors in the Northern, Middle-Belt, Southeastern, South-South, and Southwestern "regions." In the end, research was conducted in the seven (7) following States or territories:

- Abuja, Federal Capital Territory;
- Plateau State;
- Kaduna State;
- Rivers State;
- Cross-Rivers State;
- Abia State; and
- Lagos State.

. The three teams were comprised of the following members:

1) South-South/Southeastern Team:
   - Ms. Catherine Rand, Staff Consultant, TSG (Washington DC)
   - Ms. Tubosun Falase, Esq., Barrister & Solicitor, Akirenle & Co. (Lagos)
2) Northern Team:
   - Dr. Donaldo Hart, Senior Associate Consultant, TSG (Washington DC)
   - Mr. Anire Kanyi, Esq., Barrister & Solicitor, Udo-Udoma & Belo-Osagie (Lagos)
3) Southwest / Middle-Belt Team:
   - Mr. Jean-Paul Gauthier, Esq., Manager, TSG (Washington DC), Team Leader
   - Mr. Aniekan E. Ukpanah, Esq., Partner, Udo-Udoma & Belo-Osagie (Lagos)
   - Mr. Gokhan Akinci, Investment Officer, Foreign Investment Advisory Service (FIAS), the International Financial Corporation (IFC), World Bank Group (Washington DC)

The principal added value of the Roadmap methodology is the focus of the work on public sector interviews in an effort to collect primary source material. It is important to note that this draft report does not provide much legislative or regulatory analysis. The consultants thus met with multiple representatives of at least the following forty (40) Government offices:

- Nigerian Export Processing Zones Authority (NEPZA)
- Nigeria Immigration Service
- Ministry of Commerce
- Nigeria Customs Service (NCS)
- Corporate Affairs Commission (CAC)
- Nigerian Investment Promotion Council (NIPC)
- State House, Office of the President (Aso Rock)
- Federal Ministry of Employment and Production
- Office of Trademarks, Patents & Designs, Ministry of Commerce
- Federal Ministry of Justice
- Federal Ministry of Finance, Fiscal Department
- National Planning Commission, The Presidency
- Nigerian Environmental Protection Agency
- Nigerian Copyrights Commission
- National Insurance Commission
- Federal Capital Development Authority (FCDA)
- Rivers State Board of Inland Revenue
- Nigerian Ports Plc
- Abia State Environmental Health Department
- Aba Town Planning Authority

- Aba Town Engineering Office
- Kaduna State Directorate of Commerce
- Kaduna State Directorate of Industry
- Kaduna State Bureau of Lands, Surveys and Planning, Lands Administration Office
- Kaduna State Urban Planning and Development Authority (KASUPDA)
- Kaduna State Ministry of Commerce and Industry
- Kaduna South Local Government, Revenue Commission
- Kaduna South Local Government, Personnel Office
- Kaduna Environmental Protection Agency
- Kaduna Inland Revenue Service (IRS)
- Plateau Investment and Property Development Ltd.
- Plateau State Ministry of Commerce and Industry
- Plateau State Board of Inland Revenue (BIR)
- Plateau State Bureau of Lands, Survey and Town Planning, Surveyor General's Office
- Plateau State Bureau of Lands, Survey and Town Planning, Personnel Management Office
- Plateau State Bureau of Lands, Survey and Town Planning, Town Planning Office
- Plateau State Bureau of Lands, Survey and Town Planning, Lands Office
- Plateau State Bureau of Lands, Survey and Town Planning, Finance Office
- Jos Metropolitan Development Board (JMDB)

The methodology of this project however also entailed detailed interviews with private investors, civil society representatives, and professional intermediaries such as lawyers, bankers, accountants and freight forwarders. In the course of their research, the consultants thus also collectively met with multiple representatives of the following 152 primary private sector and civil society sources, in a preliminary effort to validate public sector information:

- 62 private sector companies invested in Nigeria (excluding firms in the categories below);
- 27 financial services companies, providers, or institutions;
- 12 academics, members of civil society, and the media;
- 11 consulting and accounting firms;
- 9 chambers of commerce or trade associations;
- 7 law firms;
- 7 foreign or international commercial delegations;
- 4 freight forwarding and clearing agents, Free Zone Operators, or commercial shipping services companies; and
- 3 engineers, quantity surveyors or property attorneys.

While findings could be more robust, information gathered from interviews based on the above sample should have allowed the consultants to form an entirely adequate, and far from anecdotal, picture of the Nigerian investment environment.

Overarching Investor Roadmap Issues

Two issues loom large over investment in Nigeria which do not fit neatly into the traditional "Investor Roadmap" methodology: The Nigerian Federal System and Corruption. Before beginning the Roadmap analysis proper, a brief discussion of these two issues would thus appear to be in order.

The Nigerian Federal System

Investors in Nigeria complain a great deal about the redundant and overlapping administrative procedures and requirements flowing from the different levels of Government, and consider it one of the primary problems of doing business in Nigeria. The division of powers outlines below should thus remain at the forefront of the reader's mind at all times in reading the following Roadmap Report.

In addition to the Federal Government, there are, under the *Constitution of the Federal Republic of Nigeria (Promulgation)* 1999, A1054, No. 24A 869[1], 36 States in Nigeria[2] and 738 local government areas.[3] The Nigerian Constitution defines the roles of each of these levels of Government. Although not legal dismemberments, Nigeria's "regions" include: The Southeast; the Southwest; the South-South; the North; and what is sometimes termed as the "Middle Belt" (also considered part of the North).

Federal powers are set forth in the Exclusive Legislative List in the Nigeria Constitution[4]. The Federal Government also has certain concurrent powers with the States, set forth in the Concurrent Legislative List (with Federal Law primacy over State Law), and all residual powers.[5] The National Assembly may issue Acts (formerly Decrees) and regulations in all of these areas. Federal Ministries too may issue Federal Regulations, if so empowered by a Law. In addition, certain Federal officials may *ex officio* issue Circular Letters as clarifications of Acts and Regulations, if so empowered under said Acts and Regulations. In the case of the President, these circulars are referred to as Executive Proclamations.

The areas of exclusive federal jurisdiction include:[6]

- Regulation and control of business enterprises
- Business Names, Competition, Copyrights, Patents, Trademarks, Industrial Designs, Standards, and Weights & Measures

[1] Hereinafter "the Nigerian Constitution"

[2] Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Yobe, and Zamfara (Nigerian Constitution, Art. 3(1))

[3] Nigerian Constitution, Art. 3(6), Parts I and II of the First Schedule, and Part I of the Second Schedule

[4] Nigerian Constitution, Art. 4(2)

[5] Nigerian Constitution, Art. 4(3)-4(5), 5(3)a), and the first column of Part II of the Second Schedule

[6] Nigerian Constitution, Second Schedule, Parts I and II

- Federal Government accounts, Excise duties, Export duties, Stamp duties, and Taxes on income, profit and capital gains
- International and Interstate Commerce and Trade, Import and export, Customs & Excise, Quarantine, Carriage by air, and Export standards and duties
- Banking, bankruptcy & insolvency, securities, exchange control, and insurance
- Citizenship, naturalization, residency, deportation, passports, visas, immigration & emigration
- Court judgments and Treaty implementation
- Labor, pensions, and occupational health, safety and training
- Posts, telephones, telegraphs, wireless, broadcasting, and allocation of wavelengths
- Federal roads
- Water
- Electrical damming, promotion and establishment of a national grid, and regulation of the operation of power supply plants and equipment
- Civil service
- The Federal Capital

States' powers are set forth in the Exclusive Legislative List and Concurrent Legislative List in the Nigerian Constitution.[7] State Houses of Assembly may, in these areas, issue State Laws (formerly Edicts) and State Regulations. State Ministries too may issue State Regulations, if so empowered by a Law. In addition, certain State officials may *ex officio* issue Circular Letters as clarifications of Laws and Regulations, if so empowered under said Laws and Regulations. In the case of the Governor, these circulars are referred to as Executive Proclamations.

The areas of concurrent Federal-State jurisdiction include:[8]

- Collection of capital gains, profit and income tax, and Stamp Duties, subject to a Federal Act
- Electricity, establishment of electric power stations, and generation and transmission of areas outside the national grid
- Industrial, commercial and agricultural development, subject to Federal Acts
- Cadastral and topographical land surveys, subject to Federal Acts
- Technical and vocational training

Local Government is (in theory) sovereign in its constitutionally and legally attributed jurisdictions, which include:[9]

- Various important corporate locating and site related matters[10], and issuing various tax and levy by-laws under the *Taxes and Levies Act*
- Registering businesses with respect to the above taxes
- Control and regulation of local trade and small business (including shops, hawkers, restaurants, liquor distribution, taxis, etc.)

When challenged, many local Government By-Laws are found to be *ultra vires*, but in practice, they are tolerated by the business community, in order to maintain good government relations.

[7] Nigerian Constitution, Art. 4(7), and Parts I and II of the Second Schedule.
[8] Nigerian Constitution, Second Schedule, Part II
[9] Nigerian Constitution, Fourth Schedule, Section 7, Art. 1(k) and 2(b)
[10] See below, in "Locating" Chapter.

Corruption

Another continuing problem of doing business in Nigeria is corruption. By all accounts, corruption has declined since the transition to civilian rule. One company interviewed explained that it no longer has any problems with corruption in the normal course of doing business. The company says it deals with government issues very differently than other companies. The government knows the company is disciplined and unwilling to pay bribes. "We realize that you can do away with corrupt practices and still get what you need in the shortest time period possible." Nevertheless, by and large, the problem remains daunting.

In the consultants' estimates based on anecdotal evidence, overall, investors in Nigeria devote some 2-3% of their total operating budget to dealing with Government compliance issues, a figure which rises to perhaps 5-6% of start-up costs. Perhaps some 20-30% of these costs are for "non-statutory" compliance expenses. These costs are, however, stationary, and diminish as company turnover increases.

One of the chief causes of this situation is low civil service pay. Nigerian civil service remuneration packages are improving but low, ranging from N363-N4,000/month for basic salaries and as much as N1,253-7,000/month with benefits.[11] Furthermore, the Federal Government has recently stopped the payment of housing allowance and rent subsidy to civil servants, effectively cutting civil service pay by 53-60%, depending on grade.[12] Moreover, Nigeria also suffers from a generally chaotic and opaque business and administrative environment, wherein investors and the public sector alike hoard information in order to influence greater power with respect to the administrative environment. There is also clearly a problem with respect to the public availability of legislation, regulations, and circular letters. Both investors and the civil service agreed on this point. Some investors interviewed by the consultants even expressed the view that laws are deliberately drafted ambiguously, so as to leave scope for loopholes and discretionary interpretation. Others felt the Statutes on the books were good. It should be noted that solicitors supported the latter view, stating that the Civil Service Commission did not have final review prerogatives with respect to legislation issued under military rule and that *deliberately* vague drafting was thus unlikely.

The Ministry of Commerce indicated to the consultants that more appropriate anti-corruption enforcement mechanisms than those in place were still necessary in Nigeria. The consultants concur with this view and have attempted to respond to this need throughout this report's recommendations concerning various procedures of interest to the investor.

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[11] "Obasanjo's and Chikelu's revolution," *The Guardian*, 02/03/01, p. 7

[12] *Circular regarding "Non compliance with rules about payment of Rent Subsidy to federal civil servants,"* Federal Treasury No. AI&BI/12001 and OAGF No. OAGF/PRS/005/111/158 of 01/15/01, and in "FG Stops Rent Allowance for Civil Servants," *This Day*, Vo. 7, No. 2113, p. 5

Chapter 1: Business Registration

This chapter focuses on the various procedures required of a private firm to register in Nigeria, including registering as a legal entity; registering with the statistics and relevant taxation authorities; obtaining locally issued business licenses and permits; and obtaining investment incentives.

The consulting team interviewed government agencies and investors, and set up practical investor encounters in completing business set-up. The team worked through a number of processes that investors must complete, including applying for a certificate of incorporation; and registering for investment incentives. The team also spoke with the Nigerian Investment Promotion Corporation and state level investment promotion agencies. In addition, the consulting team spoke with chambers of commerce in several states and to one state's investment promotion organization. While neither the chambers nor the investment promotion agencies are mandatory stops in the business start-up process, such organizations can often provide useful advice and contacts for investors.

Overall, the consultants' findings indicate that business registration in Nigeria is inefficient, complex, lengthy, and costly. Investors must first register with the Corporate Affairs Commission to incorporate the business. Requiring numerous steps and many forms, this process is expensive and time-consuming. Moreover, the agency's staff is inadequately trained.

The investor must also complete Business Registration with the Nigerian Investment Promotion Council. NIPC operations are inefficient, and procedural guidelines are incomplete. The NIPC registration process is redundant and unnecessary; the agency should instead provide business facilitation and advisory services.

Investors also apply to the NIPC for investment incentives. Nigeria's incentive acquisition regime and process are complicated and cumbersome, resulting in an under utilized tax incentives program. The process operates under a non-transparent approval process.

In addition to the three processes noted above, investors must also apply for a Business Premises Permit from state-level authorities. This process includes registration with the state tax authorities. Again, there are few if any written guidelines for state-level registration. Moreover, the process presents the investor with an additional delay in commencing business operations.

Detailed analysis and recommendations for improvement will be provided throughout this chapter.

1.1 Federal Company Registration

Corporate Affairs Commission (CAC)
Compliance Department
PMB 198, Area 11, Garki, Abuja FCT
Contact Person: Mrs. R.O. Nwosu, Principal Litigation Officer
Mrs. Shafi, Registrar
Mr. Moses, Public Relations Officer

While there are ten (10) Regional CAC Offices around the country, eight (8) of which are networked to the CAC Headquarters in Abuja through a Wide Area Network, the Abuja office ultimately processes all requests for company registration. The Abuja office is open Monday through Friday from 8:00am-3:00pm (although staff remains at work until 5:00pm).

1.1.1 Procedure

Step 1: Investor Holds Pre-incorporation "Founding Meeting" and Chooses Corporate Vehicle

Investors hold a founding meeting to establish the company. The investors must set aside a minimum N10,000 as share capital for compliance purposes.

Investors choose from nine (9) corporate vehicles establishing a presence in Nigeria. CAC subjects most of the corporate vehicles to an incorporation process. These vehicles are as follow:

a) Incorporated Trusteeship (ITS): Not applicable to investors; Subject to incorporation process
b) Limited Liability Company (LLC): Subject to incorporation process
c) Company Limited by Guarantee (LTDGTE): Subject to incorporation process
d) Company Limited by Shares: Subject to incorporation process
e) Private Limited Company (Plc) : Subject to incorporation process
f) Private Company (LTD): Subject to incorporation process
g) Unlimited Company (ULTD): Subject to incorporation process
h) Sole Trader: No legal identity distinct from its owner-operator. Subject to business name registration only
i) Partnership: No distinct legal identity or reporting requirements

Step 2: Investor Locates Office Space and Signs Lease

The investor must provide CAC an address for company registration. Therefore, the investor must locate office space and sign a lease. Companies may *legally* use their Solicitors' or auditors' office address; however, this complicates registration. In practice, CAC requires an independent address. Foreign direct investors may not register as foreign-domiciled companies without a presence in Nigeria.

Step 3: Investor Consults Facilitator

The investor must consult one of the following professionals prior to commencing name search and incorporation processes. Only these individuals are authorized to perform this function:

- Solicitor
- Chartered Accountant
- Chartered Secretary

To complete incorporation processes, attorneys charge between N10,000-N50,000, depending on the company's share capital.

Step 4: Investor Purchases CAC Forms

The investor purchases the following forms (appended):

- Form CAC 1 "Availability Check and Reservation of Name," pursuant to Section 32(1) and (2) of *Companies and Allied Matters Act (1990)*[1]
- Form CAC 2.2 "Nature of Situation of Registered Address of a Company," pursuant to Section 35(2)h) of the CAMA
- Form CAC 2.3 "Particulars of First Directors of Company," pursuant to Section 35(c) of the CAMA
- Form CAC 2.4 "Statement of Share Capital," pursuant to Section 35(2)d) of the CAMA
- Form CAC 2.5 "Return of Allotment of Shares," pursuant to Section 129 of the CAMA
- Form CO-1 "Declaration of Compliance with the Requirements of the Companies Decree for Registration of a Company," pursuant to Section 35(3) of the CAMA and the *Oaths Decree (1973)*

The investor may purchase these forms from several sources: the CAC Schedule Officer, Principal Registrar, Assistant Registrar, or Customs Service & Public Relations Officer. The government has made some of the CAC forms available at the commercial sections of some Nigerian embassies abroad, at Nigerian trade fair booths, and on the CAC web site at: www.cac.com.

The investor purchases the complete registration form package for N500. The issuing officer immediately issues a payment receipt: the "Revenue Collector's Receipt."

[1] Hereinafter "CAMA"

The government also offers several informational leaflets. For N250, the investor may purchase the following:

- CAC Informational Pamphlet and Schedule of Fees
- Form Filing Instructions Pamphlet

The investor completes the forms and submits them to CAC. According to the CAMA, only accredited professionals -- solicitors, chartered accountants, and chartered secretaries -- may prepare and submit form CAC 1, thereby registering a company in Nigeria. In addition, only solicitors may sign the original Form CO-1.

Step 5: Investor Conducts Name Search

The investor submits a name search request to the CAC Availability an Name Reservation Section "Cage." "Cage" personnel transfer the request to a clerk, who dispatches it to the "Computer Room." In the "Computer Room," a computer operator processes the name search request and transfers the information to an Assistant Registrar.

Step 6. Registrar Approves Application for Name

The Assistant Registrar considers the request and either approves or rejects the petition. If there is a problem with the name search request, the Assistant Registrar sends the file on to the Principal Registrar.

Step 7: Investor Collects Name Search Results

Typically within a day of filing his request, the investor may collect the search results from CAC. If the search is successful, CAC issues the investor a "Statement of Availability of Company Name."

Step 8: Investor's Solicitor Prepares Memorandum and Articles of Incorporation

After securing an available company name, the investor's solicitor prepares his Memorandum and Articles of Incorporation. Under Sub-section 27(1) of the CAMA, the investor must note the company name in the Memorandum and Articles of Incorporation. The investor's solicitor may also prepare certain incorporation-related documents, such as Form CO-1.

Step 9: Investor Obtains Bank Draft

The investor obtains a bank draft to cover incorporation stamp duties; the Stamp Duty Office requires the bank draft, but allows a cash payment if the stamp duty does not exceed N2,000.

Step 10: Investor Pays Stamp Duty at the Stamp Duty Office

Incorporating companies must pay stamp duty on share capital; the Stamp Duty Office charges vary according to the company's share capital amount. The investor can obtain a Stamp Duty Clearance Certificate within two days for a cash payment, and within 5 days for a bank draft payment. The Commissioner of Stamp Duty signs the certificate to finalize the process.

Step 11: Investor Collects Clearance Certificate

With 2-5 days, the investor collects the Stamp Duty Clearance Certificate from the Stamp Duty Office.

Step 12: Investor Consults Solicitor, Commissioner of Courts or Notary Public Regarding Filing Compliance

The investor must consult a solicitor, commissioner of courts, or notary public to confirm that Form CO-1 and the Memorandum and Articles of Incorporation meet all legal requirements. The investor must swear to the validity of Form CO-1 before one of these judicial officers.

Step 13: Investor Files Incorporation docket at CAC

The investor submits an application for incorporation to the CAC "Cage." The following documents comprise a complete application:

- Statement of Availability of Company Name
- Memorandum and Articles of Incorporation (Memorandum on company objectives and Internal Regulations)
- Letters of Consent concerning the powers of First Directors and Executive Officers
- Statement of Share Capital Form
- C-01 Compliance Form, signed by Solicitors
- CAC 2.2 "Notice of Situation of Registered Office" Form
- CAC 2.3 "Particulars of First Directors of Company" Form
- CAC 2.5 "Subscription Return of Allotment of Shares" Form
- Bank Draft
- Proof of petitioner residency, under Section 8 of the *Immigration Act*

The "Cage" forwards the application to CAC's "Verification Table."

Step 14: CAC Verifies File at the "Verification Table"

The CAC Verification Officer reviews the incorporation file; he either approves and rejects the application, or requires on-the-spot changes. The Verification Officer forwards the application to the Assessment Table.

Step 15: CAC Assesses Filing Fees

An "Assessment Table" Officer assesses incorporation fees payable, signs the incorporation docket, and sends the application to the Cashier.

Step 16: Investor Pays Filing Fees at CAC and Collects Receipt

The investor pays the assessed incorporation fees at the CAC cashier, which is located in an adjacent building. The cashier immediately issues a payment receipt, which constitutes valid proof of filing.

Step 17: Investor Presents Payment Receipt to CAC

The investor photocopies the payment receipt and submits a copy to CAC's "Cage." "Cage" staff transfer the payment receipt to the Registration Desk. The Registration Desk, in coordination with the Computer Room, issues a "RC Number." The Registration Desk passes the investor's application to the "Dispatch Desk," which then forwards the file to the Records Room.

This internal review process takes approximately 1-2 weeks.

Step 18: Investor Collects RC Certificate and Number at the RC "Dispatch Desk"

Approximately ten (10) calendar days after filing an incorporation request, the investor collects the company's RC Certificate and RC Number.

Step 19. Investor Completes Periodic Reporting and Filing

To update CAC company records and provide audited financial accounts, every company must file an "Annual Return" within 18 months of registration and annually thereafter. Section 636 of the *Companies and Allied Matters Act* requires financial institutions to file semi-annual company returns.

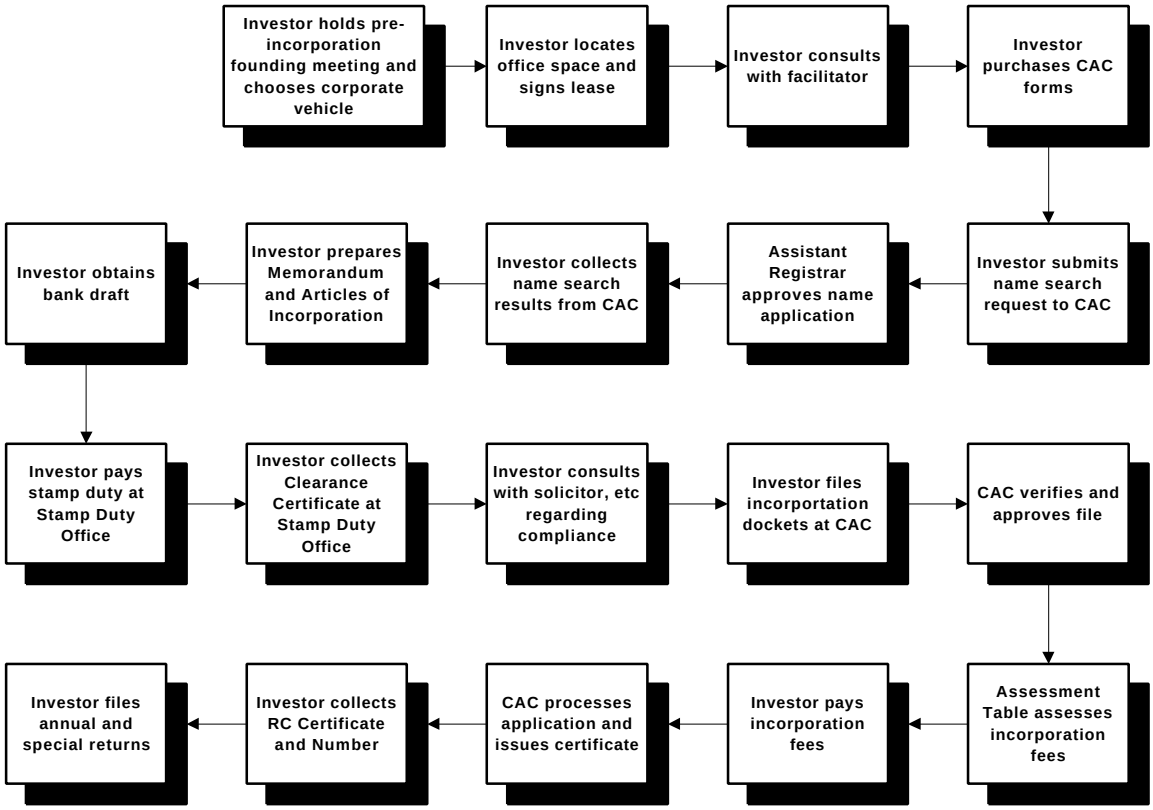
If a company alters corporate information, company name, share capital, or directors, the investor must complete a form detailing these changes.

The CAC maintains the following post-incorporation documents for public consultation:

- Copies of RC Certificates
- Audited Corporate Accounts
- Lists of Corporate Directors and Executive Officers (evidenced through Post-incorporation Board Resolutions and Minutes)
- Letters of Consent concerning the powers of Corporate Directors and Executive Officers

The annual reporting requirements imposed on companies do not suspend status. However, if companies consistently fail to file in a timely manner, they may (after 15 years) be struck from the Registry of Companies. There is no mechanism for remedying this default.

CAC Company Registration Process



1.1.2 Analysis

The legislation underlying the incorporation process is, by all accounts, of good quality and generally in line with international practice. However, the government must improve process management and administration.

- For instance, some CAC functions retain elements of Nigeria's previous "command and control" system.

The CAC has the following mission:

a) Ensure companies' legal existence;
b) Ensure that companies fulfill their legal obligations (e.g., appointment of Company Secretary; filing of annual returns; display of RC Number; etc.);

c) "Sanitize" the corporate environment;
d) Nurture and assist companies; and
e) Ensure protection of the consumer through the above functions.

Interestingly, CAC senior staff cited "sanitization" of the corporate environment (i.e., ensuring compliance and striking non-compliant companies from the CAC Registry) as their top priority and characterized "compliance" as "making sure companies stay on the right path." These priorities indicate that CAC staff believe the agency's mission priority is a command and control function.

- The consulting team is encouraged by CAC's efforts at transparency, noting in particular CAC's publicly available information: for instance, the agency makes all company incorporation and post-incorporation files publicly available. Moreover, the agency is currently computerizing all incorporation forms. However, in spite of these efforts, the information is not easy to access – neither at CAC headquarters nor in foreign embassies' commercial sections. Agencies do not display the information, nor do they offer it free of charge – often they do not even have it. Though CAC boasts a web site, few top legal firms know about it. Moreover, though documents are apparently publicly available, CAC senior management indicate that documents are kept "in the cooler." And, CAC only publishes application forms in English. The agency in general seems out of the public eye: few CAC staff have business cards, and minor public education efforts have been insufficient.

- The consulting team also notes several institutional inefficiencies in the name availability search process. For instance, the consultants believe there are too few CAC staff to handle all of the country's name search files, particularly in the Names Availability Department and the IT Department. Moreover, CAC does not optimally utilize its limited staff. The consulting team discovered that junior CAC officers do not understand their roles. In fact, the consultants believe that junior staff functions could be completed by any of the three preceding staff members in the process –"Cage" staff, clerks, or computer operators.

- Assistant Registrars control all forms submitted for compliance. Each day, Assistant Registrars demand additional clarification – on behalf of the Principal Registrar – from 8-20% of the investors. In some cases, the clarification request is legitimate, but according to the Principal Registrar, often clarification is unnecessary. The Principal Registrar explains that inadequate training contributes to such mistakes.

- While the agency currently processes name search requests within two (2) business days – the investor collects the name search results at the end of the business day following request submission – the Principal Registrar feels the entire process could be completed within 30 minutes. A quick turn-around would eliminate the investor's need – and therefore cost – to remain overnight in Abuja. Functional, high-speed computers and printers would reduce processing time; in the absence of these resources, however, the government might consider legal time limits.

- While the CAC makes additional verifications if it feels there is cause for suspicion, the international intellectual property (e.g., names and trademarks) protection offered is limited, as the Database of names provides Nigeria-only coverage and is not networked with WIPO. The Names Database is not networked into the Nigerian Trademarks Registry, the Nigerian Copyrights Registry, or Internet Domain Names Databases either. The CAC agreed with the consultants that the body that manages Trademarks and Copyrights should also manage the Company Names Verification process.

- The consultants believe CAC's numerous solicitor consultation requirements add unnecessary time and financial expense to the process, especially for SMEs and the informal sector. In fact, CAC's legal requirements are confusing. For instance, the agency requires an investor to hire a solicitor, chartered accountant, or chartered secretary to complete name registration and Form CO-1 requirements. However, the agency requires the investor to hire a solicitor, commissioner of court, or notary public to complete swearing of Form CO-1; verification of legal compliance; and the Memorandum and Articles of Incorporation.

- While CAC's Company Registration Application forms are relatively straightforward and minimalist, the agency requires an unnecessary amount of information. Senior CAC staff supported the consultants' suggestion that Form CAC 2.2 be eliminated. Moreover, some supporting documents are either irrelevant or inconsistent with CAC functions: for instance, the proof of residency document. CAC could also easily merge forms 1; 2.2; 2.3; 2.4; 2.5; and CO-1. Finally, while CAC verbally listed nine separate corporate vehicles, only five are available on the registration forms.

- CAC's verification process appears relatively efficient. Verification officers process approximately 200 requests per day, including about 150 incorporation requests. Verification officers are, therefore, processing a request every five minutes – an impressive record. Most investor errors are remedied on the spot, with the following exceptions: issues affecting the CO-1 and the Stamp Duty, which are not in CAC's jurisdiction.

- The Stamp-Duty process is less efficient. While post-stamp-duty incorporation processing time has been reduced from three months to approximately ten (10) calendar days, the process remains cumbersome. The process requires, for instance, two (2) additional, unnecessary steps. Sometimes, investors are required to submit proof of legal existence in order to clear stamp duty payment - while the process actually exists to incorporate companies and secure legal identity! Furthermore, only the Commissioner of Stamp Duty in the country's two Stamp Duty Offices (Abuja and Lagos) may sign for every single registered company. Revenue-driven, post-stamp-duty processing is in any event irrelevant to company registration.

- The CAC offers insufficient staff training. Current, on the job training includes nominal PC and procedural training. CAC management views this training "irrelevant and negligible."

- Despite efforts to appear customer-friendly, CAC has a weak customer service culture. CAC's motto is "Your satisfaction is our business," and suggestion boxes and a Customer Service Desk are evidence of customer-satisfaction efforts. CAC also offers a semi-annual time management staff lecture. Moreover, legal staff are available to assist applicants with searches. Yet, these efforts are inadequate. The consulting team, for instance, faced argumentative security gate personnel, and resorted to name-dropping to gain entry to CAC with briefcases. Furthermore, no signs point the investor to any offices, including the Customer Service Desk. Staff do not wear uniforms, few wear a staff ID card, and few are generous in offering assistance.

- Not surprisingly, CAC staff morale is low. Benefits are nominal. According to CAC management, investors frequently pay "dashes" for expedited service. The agency has no staff performance review mechanisms or incentive systems. Promotions and raises are rare: Two senior officers indicates that they had not received a raise or promotion in over nine years.

- Though somewhat run-down, CAC's facilities are acceptable. The agency indicates that new facilities are currently being established. In addition, CAC is relatively well computerized.[2] A competent chief engineer heads an IT staff of ten (10). CAC has an impressive, partially fire-proofed records room and physical recording system that contains 1.2 million business names and 400,000 incorporation files. The CAC has a number of scanners and all of the documents for the past 80 years are now electronically archived.[3]

- Some IT problems are nevertheless worth pointing out: Of two printers for the printing of all name availability search results, only one is currently operational. Furthermore, 2/3 of the CAC's copy machines and several PCs were inoperative during the consultants' visit. As the CAC outsourced record scanning; in-house staff gained no expertise in this area, and the agency has suspended scanning. The agency is unable to provide documents for consultation via diskette. CAC underutilizes the Names Availabilities Database's capabilities. Moreover, modem compatibility and connection problems, analog switching, and the lack of dedicated lines make for poor and unstable WAN links between the Abuja and the regional offices.

- Investors and solicitors indicate that, with a "business approach," the incorporation process takes foul approach" the incorporation process takes to eight (4-8) weeks "with average facilitation" and two to ten (2-10) days only "with very good facilitation." They indicated that, with a "legal approach," the incorporation process takes six to twelve (6-12) months –and may even prove fruitless.

- Full Business incorporation costs are the following:

[2] The CAC Headquarters have four (4) 393MB servers, one (1) "jukebox" with 20 gigabytes of space, and two (2) printers. Its processors are of 450Mhz speed. The CAC uses Windows NT and "Form Developer" software. The Database for Name availabilities is in Oracle 8, run on a UNYX Platform. Stand-by generators are in place to ensure optimal processing. A Wide Area Network (WAN) links 8 Zonal Offices to the Abuja Headquarters.

[3] 247 4-gigabyte tapes containing LLC registrations have been downloaded.

1) N10,000-N50,000 in professional fees (including Solicitor fees, forms, etc.), based on a scale of fees determined by the share capital of the company; and
2) N150,000-N175,000 for CAC "non-statutory fees," travel & accommodations in Abuja; for
3) Total costs of N160,000-225,000.

1.1.3 Recommendations

- According to CAC Management, its staff requires customer service, time and performance management, MIS and database management, and computer and scanning training. The consulting team recommends "international best practice" training in the form of attachments of senior staff to organizations such as the British Companies House. Training is not only required for improved service delivery but would also partially meet the need for a staff incentivization program.

- The CAC believes, and the consultants concur, the agency should greatly increase information dissemination and investor education about the registration process. The agency should exploit mass media to get information to the public. In addition, the agency should offer documents in major local languages, including Yoruba, Ibo, Hausa, and Fulani, which would be particularly useful to SMEs.

- In terms of MIS, the consultants recommend that CAC institute a rigorous "morning list" system for records consultation. The agency should also enable file consultation via diskette. Finally, the agency must complete the scanning and the fire-proofing of its records.

- CAC should improve application forms. For instance, the agency should clarify available corporate vehicles. Also, the consultants recommend that CAC merge Forms CAC 1, 2.2, 2.3, 2.4, 2.5 and CO-1; and eliminate Form CAC 2.2. The agency should also eliminate the proof of residency requirement.

- The consulting team suggests that CAC establish a staff career track, performance reviews; and a performance linked incentive program -- including raises, promotions, and training.

- CAC advocates, and the consultants support, agency restructuring, including a better definition of staff roles, new staffing policies, and job descriptions. The agency should consider doubling the staff size of the Names Availability and IT departments. Finally, CAC should hire typists to complement staff needs.

- CAC's requirement of professional registration facilitation is expensive and inconsistent with international best practice. The requirement is especially burdensome to SMEs. If CAC maintains this requirement, the agency should clarify and harmonize the roles of the various facilitators in the incorporation process.

- The consultants recommend that the agency integrate the registration process. For instance, one staff member could perform both the fees assessment and file approval steps. The agency might also consider consolidating the separate roles of "Cage" personnel, Clerk, Assistant Registrar, Verification Officer, Cashier, and Dispatcher into one position.

- CAC needs new, high-speed PCs, printers, and copy machines, or a proper maintenance program.

- CAC understands that the long and heavy registration process requires streamlining but noted in its discussions with the consultants that this would require legislative amendments (both to the CAMA and the *Immigration Act*).

- To improve IPR protection, the consulting team suggests that CAC network the Business Names Database with the Trademarks and Copyrights Registries, as well as with WIPO and international Internet Domain Name Databases. Furthermore, the Business Name availability function should be removed from the CAC's jurisdiction and handled by a single intellectual property protection unit.

- The agency should eliminate the entire Stamp Duty sub-process and fees from the incorporation process, as it adds no value to the service delivery and wastes investor time. A fee or duty can easily be collected at the CAC Cage instead.

1.2 Foreign Investment Registration and Business Permit Issuance

National Investment Promotion Council (NIPC)
Department of Registration and Monitoring
Division of Registration
Plot 1181, Aguiyi Street
Maiyama District, PMB 381, Garki, Abuja FCT
Contact Person: Mr. Ezekiel O. Uche, Director of Registration & Monitoring

1.2.1 Procedure

Once a foreign investor has a RC Certificate, he must register with the National Investment Promotion Council (NIPC) to obtain a Business Permit. NIPC notes the following reasons for its Business Permit Registration Process:

- To provide government statistics on foreign investment;
- To enable companies to obtain the "pioneer company" tax status from the Ministry of Industry; and
- To enable companies to obtain work permits for foreign personnel from Immigration (Ministry of Internal Affairs –"MoIA").

NIPC has only one office, located in Abuja. Foreign investors must, therefore, for the moment, complete this process in Abuja. NIPC plans to open six (6) regional offices during 2001.

The investor must complete the following steps for NIPC Business Permit Registration:

Step 1. Investor Purchases Information and Registration Forms

The investor requests registration forms from the NIPC. The investor can complete this step in person at the Abuja office, or through a written request. The investor purchases the following forms:

- NIPC Form 1: "Application Form and Manufacturing Activities in Nigeria" (appended): This is the NIPC's application for Business Permit and "Expatriate Quota Position" ("EP") Allotment. The form costs N10,000; and
- NIPC Form 2: "Application Form for Pioneer Certificate, Technical Fees Agreement, and Other Fiscal Incentives for Business Activities" (appended)): This is the NIPC's application for "Pioneer Company" Tax Status. The form costs N10,000.

All foreign investors, including joint venture companies, must complete NIPC Form 1; NIPC Form 2 is not mandatory.

NIPC's Director of Registration and Monitoring provides free *Registration Guidelines*. And, the agency's Department of Investor Services sells an *Investor's Guide* for N2,500, though it does not stock the free *Registration Guidelines*.

Step 2: Investor Files Application

The investor prepares a Business Permit Registration Application and submits it to NIPC's Director of Registration and Monitoring. The application must contain the following documents:

- NIPC Form 1
- CAC Registration Form CO-2 or CO-7
- Feasibility Study
- Memorandum and Articles of Incorporation (or Partnership or Joint Venture Agreement, if applicable)
- Evidence of Capital (and/or Capital Equipment) Importation
- Bank Draft for N10,000, payable to the NIPC
- 2 photocopies of Payment Receipts for NIPC Form 1
- RC Certificate, where applicable
- List of Directors and their particulars
- Company "Nigerianisation" Program

Theoretically, an investor may file his application either at NIPC headquarters or through state ministries or trade and industry. The latter will forward applications to the NIPC.

The investor may also include the following documents in his application:

- Evidence of Acquisition of Premises (not required by law, but highly recommended in practice)
- Bank Draft for N10,000, made out to the NIPC, for the Application for incentives connected with NIPC Form 2
- A check or cash payment in the amount of N5,000 for each Expatriate Quota Position requested
- Documents related to incentives acquisition (see below section in Chapter 1, on incentives acquisition)

Step 3: NIPC Performs Preliminary Analysis

A registration officer analyzes the application. He submits a brief to the NIPC Director, summarizing the status of the file, with particular attention to the following points:

- Documents filed
- Status of Applicant with CAC
- Areas of Applicant activity
- Number of persons employed, with break-down of Nigerian nationals versus Expatriates, and number of EPs requested
- Nationality and structure of ownership of Applicant
- Import and export levels, if applicable
- Levels of Capital and Equipment imported

The files are also circulated to the various members of the "Investment Environment and Business Approvals Committee" for review.

Step 4: "Investment Environment and Business Approvals Committee" Evaluates Application

Within a statutory period that may not exceed 14 working days from the submission of the Application, the "Investment Environment and Business Approvals Committee" meets and determines whether the a investor is entitled to any of the following:

- Business Permit
- Expatriate Quota Positions
- Pioneer Status, if requested (see below section in Chapter 1, on incentives acquisition)

The 12-person Committee, which is chaired by the Director of Registration & Monitoring on behalf of the NIPC Chairman, is comprised of the following individuals:

- 4 NIPC Directors (Registration & Monitoring; Planning; Information Technology; and Promotion & Investor Services)
- Representative of the MoIA, Citizens & Business Department
- Representative of the Ministry of Foreign Affairs (MFA)
- Representative of the Federal Ministry of Industry, Research & Statistics Department
- 4 *ad hoc* private sector members, as technical representatives for the Applicant's economic sector of activity

At the evaluation session, the Chair briefly reads aloud the NIPC brief and recommends a course of action. Committee members ask questions and decisions are taken by consensus.

Step 5: NIPC Issues Letter of Notification

The Committee grants (or denies) the investor's request for a Business Permit. The Committee sends the investor a Letter of Notification, which also informs the investor of the outcome of all other requests contained in the application. The Committee may also request additional information, and in the meantime grant a Provisional Business Permit. Upon receiving requested information, the Director of Registration & Monitoring may make a final determination without convening a new Committee meeting.

Step 6: Investor Pays Fees and Collects Business Permit

The investor pays registration issuance fees of N5,000 at the NIPC office. NIPC immediately issues the Business Permit.

At the end of the process, in accordance with the *NIPC Decree No. 16 of 1995,* Section 20, NIPC gives the investor two documents, each signed by NIPC Secretary or Chief Executive.

- The “NIPC Registration Certificate” (appended)
- The “NIPC Business Permit Certificate” (appended)

The NIPC may also issue the following letters, in connection with specific requests:

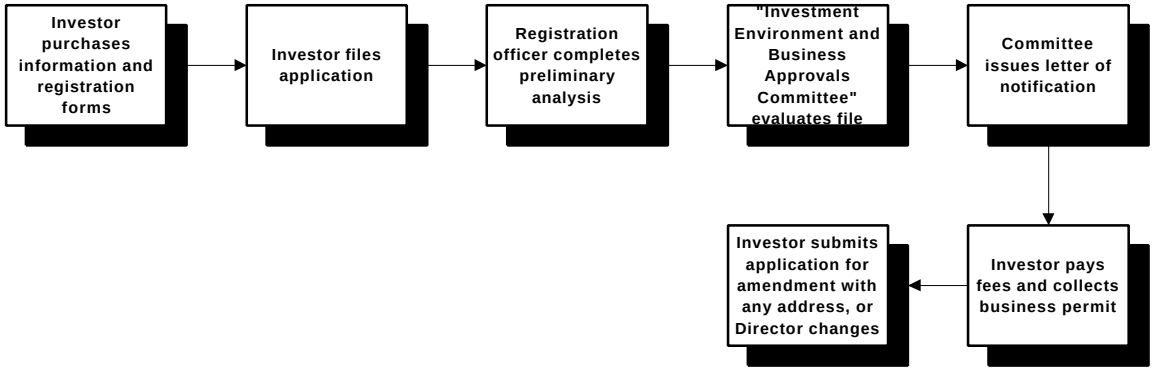
- Letter of Notification concerning “Pioneer Company Status,” addressed to the investor and copied to the Ministry of Industry and the Federal Internal Revenue Service (see below section in Chapter 1, on incentives acquisition)
- Letter of Notification concerning expatriate quota positions, addressed to the investor and copied to the Ministry of Internal Affairs (see below, Chapter 3: Employing, on expatriate entry).

The ministries copied on these letters are responsible for subsequent determinations of incentives and residency/work permits.

Step 7: Investor Reports Any Changes

The Business Permit is final and is not subject to renewals or periodic reporting requirements. However, when a company changes address or Directors, the investor must file an Application for Amendment. The investor may obtain the application from and file it with the NIPPC’s Registration and Monitoring Department. The NIPC automatically grants such changes as long as the investor provides proof of a company Board Resolution.

NIPC Foreign Investment Registration and Business Permit Issuance Process



1.2.2 International Benchmarks in Business Registration

Throughout the world, small and medium-sized enterprises (SMEs) represent the majority of new companies. SMEs typically have fewer human and financial resources to tackle the procedural and regulatory business start-up processes. Often they cannot afford to hire facilitators and, therefore, must complete all procedures unassisted.

Yet often these investors face daunting procedural requirements: numerous steps, long delays, and multiple fees. Business registration procedures are too often complicated and cumbersome – representing a substantial expense in time and money.

Many countries are recognizing that business registration procedures represent a significant investment barrier; they are acting to eliminate or reform cumbersome business start-up procedures. Mexico and Australia, for instance, are simplifying or eliminating regulations, steps, and even procedures.

1.2.2.1 General Efficiency Considerations

A recent European Union study indicates that business start-up in all European countries should require a maximum of six (6) steps. Among OECD countries, the number of company registration steps varies considerably: from one (1) in Ontario, Canada to twenty-nine (29) in Greece. The number of agencies involved in business registration also varies: from one (1) agency in the UK and Canada to six (6) in Ireland. In Europe, a business registration system with fewer than seven steps is considered simple; a system with seven to fifteen steps is considered of medium difficulty; and a system with more than fifteen steps is considered complex.

Time requirements for company registration vary considerably, from less than twenty minutes in Canada to more than three years in Tanzania. In Europe, a registration time period of fewer than five weeks is considered short; between five and twelve weeks average; and more than twelve weeks lengthy.

The combined NIPC, CAC, State and local business registration procedures in Nigeria requires more steps and requirements than the least efficient OECD countries. However, fewer agencies are involved than in many countries. Moreover, business start-up may take less time in Nigeria than in such countries as Belgium, Spain, France, Germany, Italy, Greece, and Portugal.

Business incorporation and registration time and cost

Country	Agencies	Steps	One-stop-shop	Cost	Time
Germany	2 to 10	1 to 2	YES	ECU 10-1,000	1 day to 24 weeks
Australia	1	1	YES		1 day to 4 weeks
Austria	5 to 10	5	NO	ECU 150 -10,000	1 to 8 weeks
Belgium	2 to 7	1 to 15	YES	ECU 250-2,000	4 to 10 weeks
Brazil	6	-	YES	-	4 to 7 weeks
Canada (Ontario)	1	1	YES	C$60-88	< 20 minutes
Denmark	1 to 2	1 to 2	YES	ECU O-300	1 week
Spain	5 to 17	3 to 5	NO	ECU O-150+	1 to 28 weeks
United states	2 to 6	2 to 6	Private agents	US$ 100+	Up to 1 week
Finland	4 to 7	1	YES	ECU 60-250	6 weeks
France	10 to 21	1	YES	ECU 600-2,200	5 to 15 weeks
Great Britain	1 to 5	1	YES	ECU O-300 £50	Up to 1 week
Greece	1 to 29	1 to 4	NO	ECU O-150	3 to 10 weeks
India	-	-		Rs 200 – 4,000,000	1 to 2 months
Ireland	2 to 9	2 to 3	NO	I£130 plus 1% of issued capital (1£300-470)	2 to 4 weeks
Italy	11 to 25	1 to 5	YES	ECU 150-700	2 to 22 weeks
Japan	7 to 13	1	NO	ECU 600- 1,000	2 to 4 weeks
Luxembourg	3 to 4	1 to 3	NO	ECU O-500	1 to 2 weeks

Netherlands	6 to 8	1	YES	ECU O-1,000	3 to 12 weeks
Poland				PLN 200-800	2 weeks
Portugal	4 to 10	1	YES	1.2% of issued capital	4 to 24 weeks
Sweden	2 to 7	1	YES	ECU 90-130	2 to 4 weeks

Note: The costs and time vary by industry -Upper limits generally apply.

In the US, UK, Ireland, Canada, and Australia, the company registration process is based on the Common Law "Declarative System". An investor declares his company, rather than gaining approval from numerous agencies. In these countries, company registration can be completed via the internet or fax – usually within 24 hours. In the United Kingdom and the US , investors may purchase existing companies without completing a new incorporation process. Usually, a declarative business registration system is simpler, faster, and less expensive than non-declarative systems.

Under the declarative business registration system, investors must usually only submit the following documents:

- Company charter and by-laws
- Incorporation certificate application

The declarative system has numerous advantages over command and control company registration models. It is remarkable that, coming from a Common Law tradition, Nigeria's business registration process has evolved into such a command and control model. It should be noted that this evolution has not taken place in such other former British African colonies as Ghana and Kenya. Ideally, Nigeria should return to these Common law roots. But even if it does not, international experience indicates a variety of solutions for streamlining the business registration process.

1.2.2.2 One-Stop-Shop Registration

The one-stop-shop idea is often a good solution for cumbersome and complicated business start-up processes. In fact, one-stop-shops can often substantially improve company registration processes. Because one-stop-shop decisions are often accepted by other agencies, the registration process is shortened considerably.

Many countries have established one-stop-shops for business start-up: Australia; Ontario, Canada; France; Germany; Belgium; Denmark; Italy; the Netherlands; Portugal; Sweden; Hong Kong; Singapore; Brazil; Spain; Mauritius; Malaysia; Tunisia, etc. Countries sometimes locate one-stop-shops within an investment promotion or economic development agency. Singapore and Malaysia have organized their one-stop-shops in this manner. Other countries locate the one-stop-shop within a particular ministry: for instance, Tunisia's API in the Ministry of Industry or Sweden's Office of Patents and Registration. Still others establish a one-stop-shop within the prime minister's office or the executive cabinet. Finally, some countries establish one-stop-shops within chambers of commerce: Italy, the Netherlands, France, and Morocco.

There are four basic one-stop-shop models:

1) The "Shortened Circuit": Grouping different agencies' representatives in the same place. Tunisia and Brazil operate under this system.
2) The "single interlocutor": Submitting all registration materials to a single agency representative who carries out all steps on behalf of the investor. France and Germany have this system.

3) The "Single Authority": One government authority grants all permits and start-up authorizations, without approval from other agencies. The Philippines has this system.
4) The "Single Investment Authority": One government authority approves land acquisition, as well as all start-up permits and authorizations. Hong Kong, Singapore, Jordan, and Indonesia operate under this system.

Some hybrid systems combine different elements of these four models. The Tunisian and Mauritian One-Stop-Shops, for instance, combine elements of models one and two. These countries have a single interlocutor working in a shorted circuit system.

The French established the CFE system in 1981; it represents the second model. CFEs shepherd the investor's file through the various agencies involved in business start-up: The Trade Court; URSSAF; INSEE; ASSEDIC; Revenue Services; etc. While the French system facilitates business start-up, it does not eliminate steps and therefore the process remains cumbersome and bureaucratic. While the CFE system provides a single individual with whom the investor must interact, the investor must still submit 22 distinct documents and forms, requiring considerable preparation and processing time. In fact, business incorporation typically takes fifteen weeks in France.

Models three and four are typically most effective in reducing the number of steps and documents required of the investor. They are also most effective in decreasing the number of agencies involved in the business start-up process.

Nigeria's One-Stop-Shop attempt – the NIPC – has been unsuccessful. Nonetheless, the one-stop-shop model is less efficient than the declarative Common Law business registration system.

1.2.2.3 Computerized Business Registration Models

Under Canada's Ontario Business Registration Access (OBRA) system, investors electronically register their companies. Investors can access OBRA workstations in nearly 100 locations throughout the province. Pre-OBRA, investors waited six to eight weeks for company registration. Under OBRA, company registration is completed in twenty minutes. OBRA represents international best practice for company registration procedures – the process is extremely simple and requires a single step. The Ontario Ministry of Commercial Relations established OBRA in 1996. In effect, OBRA is a one-stop-shop for business registration; the investor completes an electronic form and the ministry completes the following procedures internally:

- Commercial name research and registration
- Issuance of Permit for retail tax
- Health services tax registration
- Workers compensation tax registration
- Single tax identification number issuance

The investor need not complete any further steps at any level of government. However, companies must complete incorporation procedures before commencing the OBRA process.

OBRA's workstations provide user-friendly processes and ministry employees are on hand to assist investors with any questions or concerns. After the investor completes the computerized process, he receives a Master Business License –valid proof of registration.

Likewise, since Malaysia computerized its One-Stop-Shop, investors complete 90-95% of the necessary administrative steps within respectable time limits. Moreover, the computerized system has considerably improved procedural transparency and government accountability.

An increasing number of countries are computerizing business registration processes; in Ontario, Australia, and Spain, investors may even register over the Internet.

1.2.2.4 Investment Facilitation and Advisory Services

Throughout the world, national investment promotion agencies like the NIPC are rarely afforded complete authority over the investment process. As this table demonstrates, however, many do offer investment facilitation, advisory, and aftercare services:

Best Practices: Investment Promotion Agencies (1998)

	Be.	**Fr.**	**Ind.**	**Ire.**	**My.**	**NL.**	**Ore., USA**	**Sing.**	**Uga.**	**Wales**	**Zam.**
Proactive (P) or Reactive (R)	P	P	R	P	P	P	P	P	P	P	R
Long or short term strategy	S-T	L-T	S-T	L-T	L-T	L-T	L-T	L-T	S-T	L-T	L-T
Level Targets	Yes	No	No	Yes	Yes	Yes	Yes	yes	Yes	Yes	Yes
Image Building	*Yes*	*Yes*	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Promo. to Investors	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Promo. to Brokers	No	No	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Involved in administrative re-enginee-ring	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Facilitation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Advisory Services	No	No	Yes	Yes	No	No	Yes	Yes	No	Yes	Yes
Aftercare	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Other agencies Involved in these services	Pro-vin-ces	Re-gion -State agenci es	State	Pri-vate sector	State, Pri-vate sec-tor	Pro-vinces& Priva-te sector	Local autho-rities & Priva-te sector			Local autho-rities & Private sector	-

Source: UNCTAD

Some countries have established free technical assistance programs for young entrepreneurs. Designed to promote business creation and investment, these programs target new and aspiring investors. Practical support through direct consultations has an immediate effect on the creation rate and future success of small and medium-sized businesses.

The United States' Small Business Administration (SBA), for instance, has a 400-center network to assist in the creation and growth of small and medium-sized businesses. Retired businesspeople volunteer through the network to provide free training.

In Ireland, several agencies offer young entrepreneur support programs. The National Employment and Training Authority offers business training; the County Enterprise Boards provide general business assistance, counseling, feasibility studies, markets research, capitalization and recruitment grants. The Irish Productivity Centers provide information on production, quality, and efficiency. The Shannon Development Agency offers investment assistance, while the EU Leader Programs support new enterprises.

Great Britain has a number of investment promotion agencies and business facilitation bodies, including: The Training and Enterprise Councils; Business Links; Enterprise Agencies; Business and Innovation Centers; the Prince's Youth Business Trust; the Prince's Scottish Youth Business Trust; the Enterprise Investment Scheme; UK Science Parks; the Live Wire Export Challenge; the Diagnostic and Consultancy Service; and the Rural Development Commission. All of these programs and agencies offer practical support through a wide range of counseling and advisory services. The agencies and organizations provide a variety of information on business start-up, marketing, operating plans, finance, export opportunities, recruitment and training.

In France, the National Agency for the Creation of Enterprises (ANCE) facilitates business creation. Moreover, the National Agency for Employment Promotion (ANPE) provides financial support to unemployed entrepreneurs, enabling them to establish industrial, commercial, handicraft or agricultural enterprises.

Denmark has established a system that offers professional training and assistance to young entrepreneurs; the government has also created a "do it yourself package" aimed at enterprise development. Furthermore, the country boasts fifteen Technological Information Centers (TICs) that offer information services, free counseling, and subsidies. Meanwhile, several regional and local authorities, including the municipal governments, provide company start-up and product launch assistance to SMEs.

Finally, Australia provides 24-hour free telephone hotline for investor information.

Overall, countries that offer investors free information and assistance indicate that such direct support is more effective in promoting new business development than indirect financial assistance programs.

1.2.2.5 Other investment facilitation and civil service motivational techniques

Establishing a physically appealing investor reception area can go a long way to improving investor perception of the business registration process. Moreover, a professional and organized physical environment can often improve civil servants' customer service levels vis-à-vis the business community.

Measures to improve the appeal and ease of the business registration process include the following:

- Employee identification badges
- Publicly displayed good practice charters and service standards

- “Employee of the month" plaques
- Suggestion boxes
- Complaints book
- Informational brochures
- Organizational charts prominently displayed

Government agencies in such countries as the US, Canada, France, Tunisia, Thailand, the Netherlands, Singapore and the UK have all instituted these measures with great success in improved investor service.

1.2.3 Analysis

- Foreign investors in Nigeria complain of having to register with the CAC, the NIPC, and state governments. Furthermore, although the CAC did not corroborate this, solicitors pointed out that the CAC and NIPC dual registration process presents a chicken and egg issue for investing clients, with both institutions requiring each other’s documents. Moreover, NIPC’s Business Permit process discriminates between Nigerians and foreigners, requiring only the latter to complete the process.

- The NIPC registration process provides no value-added for the foreign investor. In fact, as an extra hoop to jump through, the NIPC process represents an investment disincentive: Investors must put the investment process on hold pending NIPC’s statistical recording. Furthermore, the agency has no authority to grant tax incentives (which the Ministry of Industry grants) or expatriate quota positions and work permits (which the Ministry of Internal Affairs grants). NIPC admits, in fact, that its business permit granting process is largely automatic: NIPC approved 85% of year 2000 applications.

- NIPC personnel appear unclear about the agency’s role. One senior official noted that company lease and proof of capital filing requirements serve a purely statistical purpose. Yet, according to other sources, the agency uses this information to ascertain the company’s physical existence and operations and thereby grant incentives.

- The NIPC is, in effect, a business approval shop. However, if this screening function is really not perceived by the NIPC as necessary, one must ask why it is maintained.

- Although the NIPC claims that investors may submit an application to state level ministries of trade and industry, the consultants found that all applications are filed in Abuja.

- Though the NIPC provides informational guidelines, the consultants find the instructions incomplete, without reference to all the required application attachments. Nigerian law does not detail NIPC filing requirements and fee schedule; nor does the NIPC widely publicize such information. While NIPC’s Director of Registration and Evaluation does maintain a government memo detailing the agency’s registration requirements posted in his office, this information is not spontaneously offered.

- NIPC Form 1 is a confusing 8-page document. Despite its name – "Application Form and Manufacturing Activities in Nigeria", Form 1 is largely a business approval form. The form states that it is not a "Pioneer Status Form," yet requires information relevant only to pioneer status and other incentives – questions 6 and 15.4. In addition, questions 9-12 require information NIPC could easily obtain from CAC company files. Through Form 1, the NIPC also requires information concerning target markets, raw material deletion rate, etc; although NIPC indicates this information is purely for statistical documentation, the questions smack of protectionism. Equally troubling to foreign investors, the form requires details about the investors "Nigerianisation" program. Finally, the form references corporate vehicles not on offer from CAC: for instance, cooperative society and sole proprietorship subsidiary. If the Incentives Acquisition procedure is to be maintained, it is unclear why it requires an independent form from NIPC Form 1.

- NIPC operations are inefficient and disorganized. One senior manager, for instance, noted that the NIPC has no formal strategy or work plans. He also indicated that there are no personnel job descriptions or staff training programs. NIPC granted just 66 Business Permits in 2000; yet, the Council's Registration and Monitoring Department alone has a staff of 30: 11 registrars and directors and 17 monitoring officers. NIPC's Registration Unit is divided into four distinct offices: the Office of Oil & Gas; the Office of Chemicals & Engineering; the Office of Agriculture & Agro-Allied Processes; and the Office of Services. Accounting for both approved and rejected applications, each Registration and Monitoring Department staff member processed an average of 2-3 applications in 2000. Processing the application merely requires a one-page brief for the Evaluation Committee hearings. If a brief takes no more than one day to draft, the consulting team estimates that one individual could complete all department work.

- Despite statutory deadlines, the Application Evaluation Committee does not meet every 14 days. Instead, the committee meets whenever there are sufficient applications to discuss. According to the NIPC, in 2000 the Committee met every 2-3 months and considered an average of 13 applications each time.

- The consulting team attended a committee meeting, and noted several other procedural weaknesses:

    1) Only the Chair and Secretary appear familiar with the Rules of Procedure;
    2) Several Committee members were absent, including all private sector representatives and the Ministry of Foreign Affairs representative; and
    3) Many members provided neither verbal nor written commentary regarding acceptance or rejection. Instead, the Chair appeared to infer approval from their silence –a risky inference.

- On the other hand, the consultants noted several positive elements during the evaluation session:

    1) Committee members were generally familiar with the discussed files;

2) Committee members exhibited a spirit of investor facilitation and an effort to limit bureaucratic requirements; and
3) Committee members advocated r speedy treatment (with each Application being adjudicated within 5-15 minutes).

1.2.4 Recommendations

The consultants strongly recommend that the government eliminate the entire NIPC registration process. The consulting team concurs with earlier FIAS Project findings that the NIPC should instead provide business facilitation and advisory services. At this time, the NIPC staff appears well suited, willing, and receptive to such a mandate change. Since the interviewed state-level chambers of commerce (OCCIMA in Kaduna State and PLACCIMA in Plateau State) provide poor investor facilitation services, the NIPC is the only likely candidate for a facilitative role. Consultants. Moreover, according to the CAC, Section 7 of the CAMA renders that agency uniquely responsible for company registration in Nigeria; legally, therefore, NIPC must withdraw from business registration activities.

Barring the implementation of this recommendation, the consultants offer the following subsidiary recommendations:

- Greater CAC-NIPC coordination is necessary. The CAC took note of this suggestion at a World Bank-organized project workshop and proposed renewed collaboration on resolving these matters. The NIPC indicated to the consultants that it should have more access to other agencies' WANs in general. In addition to facilitating the NIPC's statistical functions interagency WAN access would reduce redundant information requests from investors. At a minimum, CAC advocates the reinstatement of the NIPC/CAC Commission to improve agency coordination.

- The Ministry of Justice recommends that NIPC require a single form from investors. The consultants agree, and note that all required forms should be streamlined, reorganized, and request only pertinent information. The consulting team also recommends a single certificate upon process completion.

- The NIPC should overhaul its Registration and Monitoring Department. One senior NIPC official suggested that the agency establish the following:

  1) A Strategy;
  2) Work-plans;
  3) Proper staff job descriptions;
  4) Streamlining and rational staffing; and
  5) Training (particularly with respect to customer service).

- In addition, the consultants suggest NIPC use a single officer for initial documentation processing -- allowing substantial staff reduction.

- Moreover, NIPC should streamline its Evaluation Committee. The consultants believe that the current 12-member committee does not facilitate consensus-based decision-making, especially since the NIPC is over-represented. The

consultants recommend that NIPC eliminate 3 of the agency's four representative, and three of the private sector's four representatives.

- The consulting team suggests that NIPC formalize and circulate Evaluation Committee's Rules of Procedure, including requirement for on-site written petition approvals, vote waivers for non-attendance, etc.

- Finally, the consultants strongly recommend that NIPC create a proper Investor Guide to Business Registration. Unlike this report, the guide would be purely descriptive. NIPC should widely publicize the guide, since existing investor guides by the OCCIMA, PLACCIMA, and NIPC are not sufficiently useful.

1.3 "Pioneer Status" Investment Incentives Acquisition

Federal Ministry of Industry
Industrial Inspectorate Department (IID)
Federal Secretariat, Garki, Abuja
Contact Person: Director of Industrial Inspectorate

The complexity of the tax system and the lack of coordination between government agencies at the federal level, and between federal and state governments, has given rise to many different and overlapping incentive schemes in Nigeria. While a detailed policy-level analysis of Nigeria's incentive regime is beyond the scope of this study, this section will discuss administrative-level issues in the federal "Pioneer Status" investment incentives scheme.

Companies can obtain Pioneer Status in several ways: if they produce products declared "pioneer products" (see Appendix 1 for the list of products) under the *Industrial Development (Income Tax Relief) Act No. 22 of 1971 as amended in 1988*; if the NIPC has declared it a deserving enterprise; or if the company locates in an "economically disadvantaged" area. Pioneer Status is not automatic and is subject to cancellation where the granting of the concession is based on false declarations. The Pioneer Status provides a five-year tax holiday to qualified investors, with a two-year extension for those located in economically disadvantaged areas. These areas are defined in the NIPC's guide to investment incentives in Nigeria.

Even with Pioneer Status, a company must report taxes. The government will not tax a company on principal operations income. However, income rising from non-core operations is subject to taxation. A Pioneer Status company attaches a copy of the Pioneer Status Certificate when submitting its income tax return to the Federal Inland Revenue Service (FIRS).

To gain Pioneer Status, a company must be a Public or Private Limited Liability Company incorporated and registered in Nigeria under the Companies and Allied Matters Act. Joint Ventures and 100% foreign owned companies must have a minimum qualifying capital expenditure of N5 million; however, 100% Nigerian companies qualify at N150,000, with a minimum Authorized Share Capital of only N500,000.

Although the Registration Division (RD) of NIPC's Registration and Monitoring Department is responsible for registering and overseeing the program grants Pioneer Status during the "Business Registration" process (see above), and the Federal Inland Revenue Service (FIRS) administers the program, it is the Federal Ministry of Industry which actually verifies production and *de facto* confirms eligibility.

1.3.1 Procedure

An investor must complete the following steps to acquire Pioneer Status:

1.3.1.1 Application and Appraisal by the NIPC

Step 1. Investor Requests Information and Purchases NIPC Form 2

After registering with the CAC, foreign and domestic investors apply to the NIPC for a Pioneer Status Certificate.[4] The investor visits the NIPC in person in Abuja or sends a written request in order to obtain NIPC Form 2: Application for "Pioneer Company" Tax Status. Investors may purchase Form 2 at several places: the NIPC Headquarters, the Headquarters of the Manufacturers' Association of Nigeria, the NACCIMA, and at NIPC regional offices upon their establishment. Mailed requests should be addressed to the Secretary/Chief Executive, NIPC, Abuja, Nigeria. In a written request, the investor must include a nonrefundable bank draft for N10,000 payable to NIPC Headquarters, Abuja. Investors must submit the same bank draft if purchasing the application in person.

Step 2: Investor Completes and Submits Application

The investor completes NIPC's Pioneer Status application and submits it with the following documents:

- Memorandum and Articles of Association;
- Business Permit – if the company has some foreign equity participation (100% Nigerian companies do not require Business Permit);
- Certificate of Incorporation;
- Tax Clearance Certificate;
- Feasibility Study;
- Completed NIPC Form 2;
- N10,000 with the original purchase receipt;
- Evidence of Machinery and Equipment Purchase; and
- Evidence of physical development of the factory site.

The NIPC forwards NIPC Form 2 to the agency's Secretary/Chief Executive.

An investor must apply for Pioneer Status within one year of commencing production.

Step 3: Registration Director Conducts Preliminary Analysis

A Registration Officer analyzes the investor's application and composes a file summary memo for the Director.

The Registration Officer circulates copies of the documents and the memo to "Investment Environment and Business Approvals Committee" Members.

[4] By law, foreign investors are also required to register and obtain a business permit at the NIPC.

Step 4: Committee Holds Appraisal Meeting

Within the statutory period of 14 working days (in theory) from the submission of the Application, the “Investment Environment and Business Approvals Committee” meets and determines whether the Applicant is entitled to Pioneer Status. At the session, the Chair briefly reads aloud the content of the NIPC brief and makes recommendations as to the course of action to take. Committee members may raise concerns and/or questions. Decisions are taken by consensus.

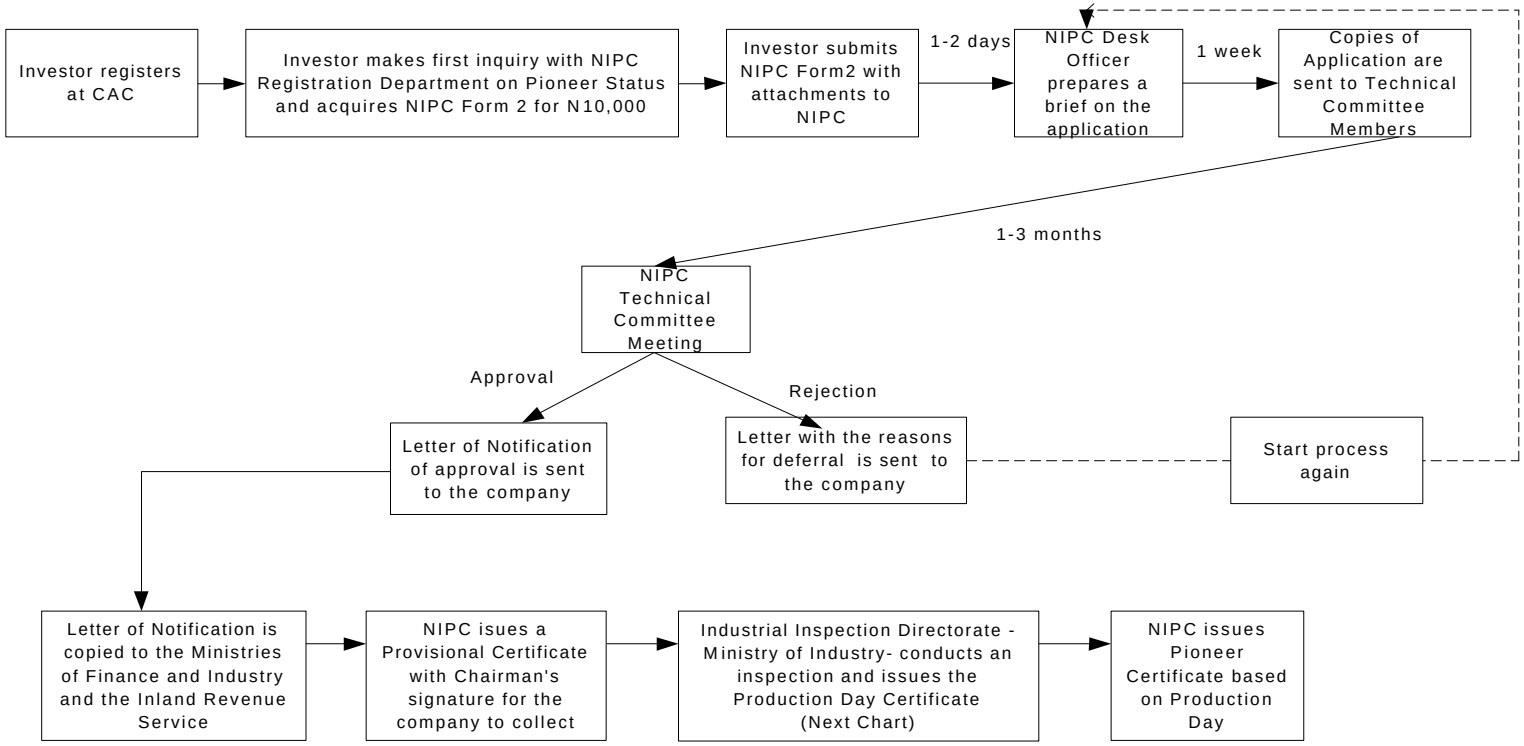
Step 5: NIPC Issues Letter of Notification

The Committee grants (or denies) the request for Pioneer Status. The Letter of Notification is also copied to the Ministry of Industry, Ministry of Finance, and the Federal Internal Revenue Service (FIRS). If any information is missing from the file, which has prevented a final decision, the Committee may either grant a provisional approval, pending production of the information, and/or make a request for further documents or clarifications. Upon receiving such information, the Director of Registration & Monitoring may make a final determination without a new Committee meeting.

Step 6: NIPC Issues Provisional “Pioneer Status:”

With the Letter of Notification, the investor may visit the NIPC and collect the “Provisional Pioneer Status Certificate.”

Pioneer Status Application and Approval Process



1.3.1.2 Inspection by the Federal Ministry of Industry, Industrial Inspection Department (IID)

An important and lengthy step in the acquisition of Pioneer Status is the inspection by the IID to issue the "Production Day Certificate."[5] After the NIPC has issued the Letter of Notification indicating that Pioneer Status has been provisionally approved and has copied the Ministry of Industry, the process of acquiring such status moves on to a second stage. Upon request from the investor, a senior NIPC officer will accompany the investor to the IID in order to facilitate the opening of a file with the IID. The steps involved in that subsequent procedure are as follows:

Step 1: IID Invites Investor to File Notification

Upon receipt of the Letter of Notification, the IID initiates preliminary correspondence with the company. The correspondence indicates that the IID has received the information letter from the NIPC and draws attention to the provisions of the Section 6 of the *Industrial Development (Income Tax Relief) Decree No. 22 of 1971*. IID also attaches a long form formatted to provide detailed production and sales figures (appended).

Step 2: Investor Files Notification, Proposing "Production Day"

Once the company is operational and is capable of estimating a "production day," it files a notification with the Director of the IID, proposing the date of production and reasons for selecting that date. The company also provides detailed information on production and sales based on the form provided by the IID. The data to be provided is over a spread of 11 months: from 5 months before the month of the production day to five month after the month of the "production day."

Step 3: IID Zonal Officer Conducts Site Visit

Upon receipt of investor notification, the Director of the IID contacts the IID Zonal Officer responsible for the geographic area where the investor is located and instructs him to schedule a Site Visit and submit a Site Report.[6]

The Site Visit will occur as soon as the Zonal Officer's schedule permits and the investor arranges for the necessary transportation to and from his site. The Zonal Officer inspects the investor's facilities in order to confirm data provided by the investor as well as entry into production. After the Site Visit, the Zonal Officer files a Site Visit Report with the IID Director.

[5] For the purpose of administering the Pioneer Status concession, "Production Day" means the day on which the operations of a Pioneer company commence for the purpose of the *Income Tax (Relief) Act.*
[6] IID has 8 zonal offices: Lagos, Kaduna, Port Harcort, Benin, Kano, Joss, Enugu, and Ibadan.

Step 4: IID Performs Data Analysis

The IID Schedule Department conducts data analysis based on the Site Visit Report, in order to determine the break-even point of the investment and capacity utilization ratios. Based on the analysis, the Department recommends confirmation of "production day" to the Director of IID.

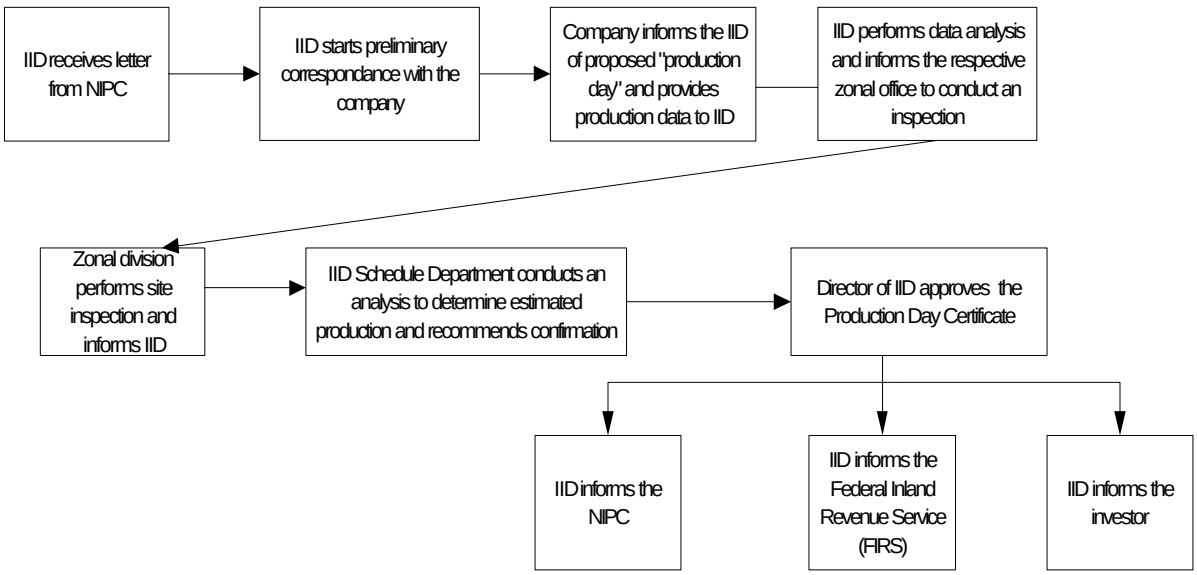
Step 5: IID Issues "Production Day Certificate"

Upon reception of the Site Report and the analysis from the Schedule Department, the IDD Director issues a "Production Day Certificate" to the investor and copies the NIPC and the FIRS.

Step 6: Investor Pays Fees and Collects "Pioneer Status Certificate"

Upon reception of the "Production Day Certificate," and payment of a N10,000 processing fee, the NIPC issues a "Pioneer Status Certificate" to the investor. This Certificate is a mere formality and confers no additional rights beyond the Production Day Certificate.

Inspection Process by the IID (Ministry of Industry)



1.3.2 International Practice

Ireland's Industrial Development Agency (IDA) approves and administers all investment incentives. The IDA's incentive package is based on the following principles:

- Simple and practical implementation
- Well-defined legally

- Clear implementation of defined policies

To achieve these objectives, administration procedures are regularly updated and refined.

Irish tax law defines all tax incentives. Domestic and foreign manufacturing (and specific service sub-sector) companies are eligible for these incentives. The amount of tax-reduction is pre-defined and non-negotiable – increasing the program's transparency. Qualifying companies submit tax returns to the revenue authorities. If companies meet the incentive program's legal requirements, the fiscal authorities tax corporate profits at a specified reduced rate.

For the most part, companies self-administer the tax component of IDA incentive packages. Companies submit annual returns, and self-assess corporate tax incentives based on their corporate profits. Subsequently, IDA project staff monitor incentive implementation, particularly to evaluate the financial progress of benefiting companies. Progress evaluation helps IDA fine-tune its incentives program.

IDA uses several monitoring tools to establish investment promotion strategies and incentive policies:

- Annual employment survey
- Annual value-added survey
- Biennial R&D assessment
- Triennial review of national investment performance

1.3.3 Analysis

Nigeria's incentives acquisition regime is complicated and cumbersome. As a result, tax incentives remain underutilized. The review of the Pioneer Status Scheme has evidenced key shortcomings in the current system. There are many problems at the administrative level since the procedures appear multiple, duplicative, not always useful and sources of significant delays. Several issues bear noting in this regard:

- The confusing array of incentives available in Nigeria is compounded by a number of factors. The description of the administrative procedures that investors have to follow for obtaining the Pioneer Status has evidenced the following characteristics:

    - Multiple Agencies and Steps: The Pioneer status requires at least 6 steps, involving at least 3 agencies or Ministries. Although most incentives seem to be administered by either FIRS or the Ministry of Finance, there are several more bodies involved in the awarding of incentives. All in all, there seems to exist vast potential for investors to be confused and frustrated in the face of Nigeria's incentive regime

    - Long: In spite of the statutory deadlines, the Application Evaluation Committee (Pioneer Status) does not meet every 14 days, but rather only when there are a sufficient number of applications. In the year 2000, the Committee met on average once every two to three months, to consider 10-16 applications each time. Another example concerns the Site Visit required for issuing the production

day certificate. The delay can vary from 1 month to 2 years, depending on the location of the applicant's activities. Several sources agreed that, with a "business approach," the average completion time for this procedure appears to be approximately 1 year.

- o Duplicative/Redundant: The second level of communication between the IID, the NIPC, and the Ministry of Finance is duplicative of the 1st level. The information flows among these organizations just to confirm the production days certificate and the exchange from provisional to "actual" pioneer status certificate.

- o Non-Transparent/Discretionary: No clear criteria used in the approval process. An investor suggested that, in order to get all of the required steps accomplished within one month with a guaranteed approval, one must pay about US$3,000 in non-statutory fees. A second investor stated that these costs were unpredictable, "tricky," and "depend on your negotiating skills". He indicated, however, that that these extra costs can exceed N2-3 million (in staff time, travel costs, use of consultants, and payments to various parties). High non-statutory costs increase investment cost and represent a significant deterrent to SME investment.

- The paperwork involved in acquiring incentives is confusing. NIPC Form 1 is a confusing 8-page document. Despite its name –"Application Form and Manufacturing Activities in Nigeria"- Form 1 is largely a business approval form. Though the form explicitly states that it is not a "Pioneer Status Form," it requires information only relevant to pioneer status and other incentives: questions 6 and 15.4. In addition, questions 9-12 require information NIPC could easily obtain from CAC's company files. Through Form 1, the NIPC also requires information concerning target markets, raw material deletion rate, etc; although NIPC claims to require such information for purely statistical reasons, the questions smack of protectionism. Equally troubling to foreign investors, the form requires details about the investors "Nigerianization" program. Finally, the form references corporate vehicles not on offer from CAC: for instance, cooperative society and sole proprietorship subsidiary. NIPC Form 2 is likewise confusing. A 9-page document, Form 2 asks a series of unnecessary questions. Sections A, D, and E, for instance, require information the investor has previously submitted to CAC. Numerous other questions require business information that is never even discussed during the Commission hearing on the application. If the NIPC role is to be maintained in incentives acquisition, why it requires a separate form (NIPC Form 2) from the Business Registration Form (NIPC Form 1) remains unclear.

- The consultants do not understand why the investor receives two separate, yet virtually identical certificates The consultants find the NIPC's "Pioneer Status Certificate" a mere formality that provides no additional rights not already granted by IID's "Production Day Certificate."

- Nigerian incentives are poorly timed. Although in principle the practice of FIRS administering statutory incentives is better than discretionary ex-ante assessment, it works only if an investor has a guaranteed entitlement. Without a guarantee, the ex-post nature of the incentives creates greater uncertainty in the

investment environment. In addition, the broadly applicable "pioneer status" incentives can only be requested after an investor has made a substantial commitment.

- The incentive system is unclear and complicated. Although FIRS or the Ministry or Finance appear to administer most incentives, several other agencies are involved. Given the uncertainty of the incentive system, the consultants are surprised investors do not offer greater criticism. The consultants believe that most investors do not bother applying for Nigeria's numerous incentives. The system's numerous bottlenecks –while designed to reduce unofficial investor abuse– prevent serious investors from benefiting.

- Currently, Nigeria has no central clearing-house to provide clear and complete incentive information, application procedures, etc.

- The complicated, labor-intensive system favors large companies that can afford facilitation services. The system is disadvantageous to SMEs –the type of companies most likely to provide new products and services and offer employment opportunities. Because the current system is not transparent, it encourages corruption.

- Service sector investors note that the Nigerian incentive programs focus almost exclusively on the manufacturing sector, ignoring service sector investment. In addition, the system discriminates between foreign and domestic investors (for instance in terms of the additional documentary and share capital requirements imposed on investors. The necessary capital expenditure for a foreign company to qualify for Pioneer Status is N5 million, while the qualifying amount for a domestic company is only N150,000). This is particularly ironic since the service sector has created dynamic economic growth throughout the developed world and is increasingly responsible for generating large cross-border income inflows from foreign clients.

- Nigeria's complicated and discretionary incentives program is operated with inadequate staff and systems support.

- The consulting team wonders if NIPC is the appropriate agency to administer investment incentives. To the extent that some incentives are necessary (particularly if this term is defined to include duty relief on imported inputs for exporters), administration and monitoring are essential. However, there is a strong case for investment promotion agency to focus on promotion and leave investment incentives to other agencies. The Irish case is good example of automatic incentives, with minimal monitoring and administration.

- Screening for eligibility involves a degree of discretion on the part of the authorities. Such discretion opens the possibility of corrupt decision making.

1.3.4 Recommendations

- Principally, the consulting team recommends that the NIPC and the Federal Ministry of Industry be completely removed from the incentives acquisition process, and provide no more than informational services in connection with it. FIRS should administer the entire process.

- The IID Site Visit and NIPC Committee evaluation requirements should likewise both be eliminated.

- The consultants also suggest Nigeria develop a transparent national investment incentive policy. The most effective remedy to the current complex incentive regime would be a national investment incentive policy that strictly and clearly regulates what the federal government, individual states, and municipalities can offer. Such a policy must provide uniform and transparent rules and be easily accessible to foreign investors in the major languages of the international business community. The Irish case (above) provides a good model incentives acquisition and administration framework.

- The incentive scheme resulting from this full-scale analysis should be automatic, performance based, and awarded against transparent and consistent criteria. This will minimize case-by-case, discretionary consideration, involving decisions based on multiple, qualitative and sometimes inconsistent criteria, as well as unreliable information, and resulting in biases.

- To the fullest extent possible, the process of qualifying for an incentive, delivering the incentive, and monitoring its operations should be administratively simple. The incentive should be readily comprehensible to those using it, simple to apply for, and to obtain in full and, in relation to the benefits provided, easy and inexpensive to administer and monitor.

- Nigeria should address the timing of Pioneer Status acquisition. NIPC may want to increase the incentive value of the tax holidays that are available to investors in Nigeria by encouraging the award of pioneer status before the investor has decided whether to invest or not, and according to clear criteria.

- The NIPC could, with the cooperation of other government agencies, encourage the development and maintenance of a list of industries and any other clear and relevant criteria for the automatic awarding of pioneer status. Any investor whose activities are in a qualifying industry and who meets any other transparent criteria specified in advance should receive pioneer status. The only procedural step ought to be a determination, by the Minister of Finance, that the investor has indeed met the criteria. The NIPC should seek to work with the Ministry of Finance to assure the automaticity of the Pioneer Certificate, so that an investor will know in advance of his “go ahead” decision what incentives he will receive; only when incentives are thus completely predictable will they influence investment decisions, as they are supposed to do (A “positive list” of industries already exists, where pioneer incentives may be awarded. An investor is not, however, automatically entitled to pioneer status if its activities are on the list. And there seems to be no clear list of other criteria by which a proposal is

judged. This "positive list" for incentives should not be confused with a "negative list" of industries where foreign investors may not operate at all).

- The consultants also recommend that Nigeria establish a clearinghouse of investment incentive information and a web-based information site. FIRS, the NEPC, or the NIPC could establish the clearinghouse. As a first step, the government could require all current government agency web sites to contain useful investment information. In addition, the Nigerian Government should establish a multi-lingual central web site detailing all regulatory issues relevant to foreign direct investors. The Australian government web site for foreign direct investors provides links to all government departments and agencies that might be involved in the foreign direct investment process. This site details incentive programs and eligibility requirements, and provides direct e-mail links for additional information. Investors can apply on-line for particular programs.[7]

- Furthermore, it seems clear that, even within the parameters imposed by the existing legislation, some improvements could be made to the transparency of the award criteria and the procedures used in the on-going administration:

  1) Eliminate requirements for memorandum and Articles of Association, Feasibility Studies, and Business Permits from Pioneer Status Applications;
  2) Network NIPC to CAC for verification of incorporation status;
  3) Use post and e-mail to notify investors of processing completion;
  4) Eliminate redundant NIPC Pioneer Status Certificate, as it adds nothing to the Production Day Certificate;
  5) Replace NIPC Forms 1 and 2 with a single, simplified, rationalized, and harmonized form;
  6) Hold mandatory, scheduled Committee hearings and Site Visits; and
  7) Institute deemed approvals for both Committee hearings and Site Visits, contingent upon time limits.

[7] *See*, <http://www.dist.gov.au/invest>

1.4 State-Level Business Registration

Under the Nigerian Constitution, the federal government has exclusive jurisdiction over business incorporation and business registration. Therefore, state governments should play no role in the process. However, certain states have gained some authority over the process through shared federal-state jurisdiction over tax registration or business premises certification. As a result, according to one Kaduna State chamber of commerce representative, the complete state-level business registration process and start-up requirements may take six (6) months to complete.

1.4.1 Procedure

1.4.1.1 Kaduna State

Kaduna's state-level Ministry of Commerce and Industry (MCI) has one investment function: to grant the business premises permit. No investor may operate a business without a business premises permit. In completing the business premises permit process, however, the Ministry plays other investment roles: For instance, the Ministry reviews an investor's business plan on behalf of the Bureau of Lands; and, the Ministry notifies the tax authority of the business' existence.

In order to obtain his business premises permit, the investor must complete the following steps:

Step 1: Investor Visits Ministry of Commerce and Industry and Submits Feasibility Study

The investor—presumably new to Kaduna if not Nigeria— visits the Ministry of Commerce and Industry and meets with the permanent secretary and his staff. The investor presents his credentials, including the company's Memorandum and Articles of Incorporation and Tax Clearance Certificate. This is essentially a non-mandatory but highly-recommended protocol visit during which the investor solicits good will; the Ministry provides investment advice and general orientation. Ministry employees explain investment procedures and refer the investor to other Government agencies. The investor may however immediately capitalize on the opportunity to present his feasibility study directly to the Ministry. If he does not, the Ministry will in any event need to obtain it later on from a less certain source –the Bureau of Lands.

Step 2: Investor Purchases Business Premises Permit Application

The investor purchases a "Business Premises Permit Application" (appended) from a clerk on the first floor of the Ministry of Commerce and Industry. The application costs N100 (US$1). The clerk issues a receipt of payment.

Step 3: Investor Submits Business Premises Application

The investor completes and submits his business premises application to the Ministry of Commerce and Industry. The investor attaches a photocopy of receipt of payment for the form and a copy of the Certificate of Incorporation. At the time of submission, the investor pays an application fee. A small-scale industry business premises permit costs approximately N5,000 (US$45).

Step 4: MCI Considers Feasibility Study

The Ministry of Commerce and Industry reviews the investor's feasibility study and processes his business premises permit application. If the investment requires land, the Ministry sends the feasibility study to the Bureau of Lands, with any comments attached. The Ministry of Commerce and Industry then sends the application to the Board of Internal Revenue.

Step 5: Board of Internal Revenue Registers Company

The Board of Internal Revenue registers the company for taxation purposes. The board creates a computer registration form, registers the business name for its own archives, and returns the printed form to the MCI, accompanied by the business premises permit application. The IRS also issues a *Receipt for Payment of Registration of Business Premises* (appended).

Step 6: Director of Commerce Signs Permit

MCI's Director of Commerce signs the business premises permit application, completing the authorization process.

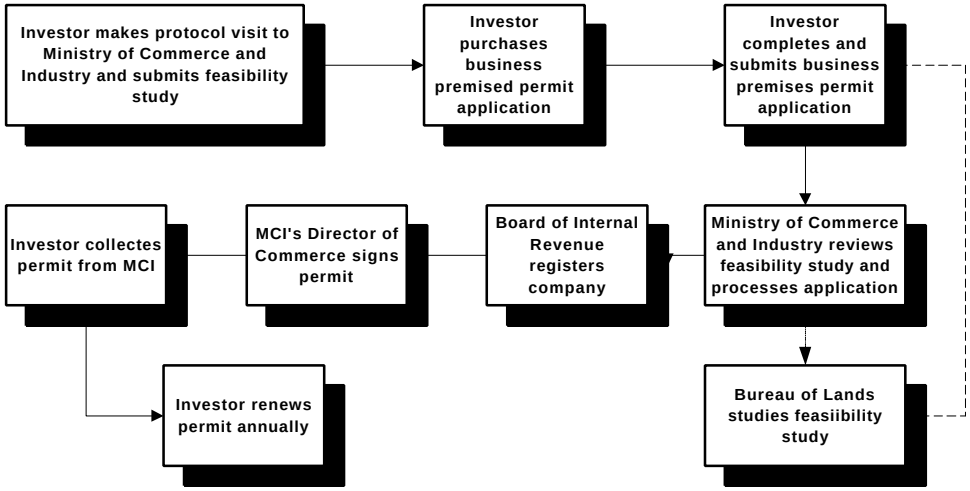
Step 7: MCI Gives Investor Authorized Business Premises Permit

The investor may pick up the signed business premises permit at this point. The Ministry of Commerce and Industry does not notify the investor when the permit is complete. Ministry staff members indicate that the entire process takes one week or less.

Step 8: Investor Renews Permit Annually

The investor must renew the permit annually; the annual renewal costs N3,000 (US$30).

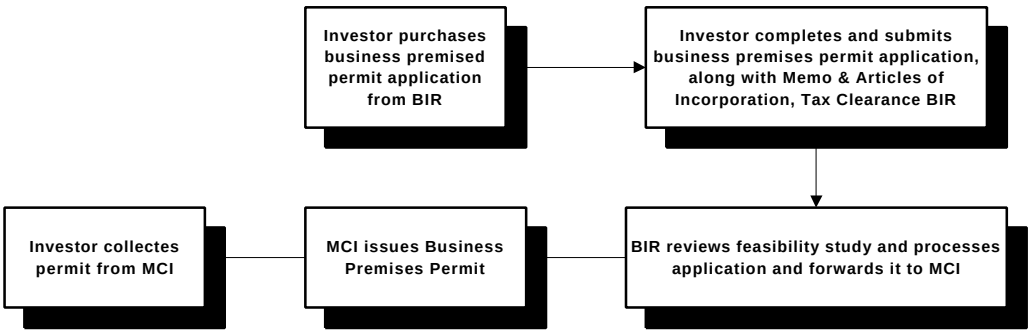
Kaduna State Business Premises Permit Application Process



1.4.1.2 Plateau State

In Plateau State, the Board of Internal Revenue (BIR) requires a business premises permit. The application form costs N100 and the actual registration N10,000, while annual renewal is N5,000. To apply for the BIR permit the investor presents the company's Memorandum and Articles of Incorporation and Tax Clearance Certificate. The BIR prepares the form and sends it to the MCI (unless the applicant physically takes it over), which actually issues the permit.

Plateau State Business Premises Permit Application Process



1.4.2 International Practice

International studies indicate that micro-enterprises are most hindered by a country's regulatory and taxation environment.[8] In some countries, a rigid regulatory environment, particularly the tax system, represses the informal and micro-enterprise sectors. A burdensome regulatory environment, in fact, encourages illegal economic activity. Often, the tax regulation compliance costs completely hinder entrepreneurial initiatives – hurting overall economic development. In fact, international experience indicates that, faced with an excessive regulatory environment, micro-enterprises refrain from tax registration.[9]

Countries known for simplified, investor-friendly tax registration processes include Denmark, Ireland, Canada, Australia, and Chile. Many countries have adopted procedures that reduce the number of forms, and procedures, and thereby time, required for complete tax registration. In the simplest tax registration systems, a single form is required, certification and notarization requirements are minimal, registration is free; and approval takes one day. Ireland and Canada shortened the registration process by consolidating multiple tax registration agencies and forms under one system, while Australia streamlined the registration process with a one-stop-shop where investors complete all registration steps in one visit.

[8] Turnham, D., *Employment and Development, a new Assessment*, OECD, Paris
[9] De Soto, Hernando, *The other path: the informal revolution in the Third World*, 1990

Denmark boasts an extraordinarily simple, quick, and efficient tax registration processes. Investors can complete tax registration and begin operations within one week. The tax administration is responsible for all related registrations on behalf of the company.

Irish tax registration is similarly simple – investors complete the process in one step. New investors submit one form to the Irish Income Order, which completes registration for all taxes -- income, social insurance, VAT, etc. The process requires no further documentation, certification, or notarization. Moreover, investors can easily obtain registration forms from local tax offices, via the internet or by telephone. The tax authority processes all new registrations within ten (10) days.

In Canada, investors register at the nearest Canada Income Office; one step and one form suffices for all four different taxes: Corporate Tax, VAT, social contributions and import/export taxes. In fact, investors can even register online, via Revenue Canada workstations, which are located throughout the country. Online registration requires fifteen minutes and no waiting time. Furthermore, investors submit minimal information and no documentation or fees. Registration occurs in real-time.

Australia's federal government offers online tax registration. Investors complete one online form. The interactive website immediately relays the company information to all other relevant tax registration agencies. Investors can complete registration in forty-five to sixty minutes. The government must process the registration within 28 days.

International best practice indicates that electronic tax registration greatly simplifies and speeds the tax registration process. Currently, many countries are using internet or public networks to process tax registration applications. Electronic registration offers numerous advantages:

- Simplified accounting process
- Reduced accounting mistakes
- Prompt registration and tax reimbursements
- Immediate confirmation of receipt
- Advice through "dialogue boxes" programmed in the tax statement software
- Ease of information management by the tax authority
- Reduced management costs
- Reduced tax fraud

A number of countries, such as Chile, Ireland, and Canada, have also established Single Tax Identification Number (TIN) systems that facilitate registration.

1.4.3 Analysis

Registering a firm with the fiscal authorities is not complex, but it requires numerous steps. An investor must complete separate federal and state tax registration processes. However, companies will have more than one tax registration number at the federal and the state level – companies have a registration number for each office through which they pay tax. Companies cannot register electronically, although the government is developing a computerized system, contingent on a modernized telecommunications infrastructure.

While the purpose of the Kaduna State "Business Premises Permit Application" procedure is a bit unclear, its tie-in with tax registration grants it a certain importance. Given its striking similarities, the consultants assume the rationale of the Plateau State process to be the same one. Furthermore, while not universally required, business premises permits are not an unusual requirement of local governments around the world.

The *Kaduna State* Business Premises Permit application process provides ample illustration of interagency communication: the Ministry of Commerce and Industry, for instance, notifies the tax authorities of a new business. Moreover, the Ministry completes the process in one week, which is not unreasonable. The consulting team completed a hypothetical business premises permit application process and found the process straightforward.

The consultants' analysis will thus focus on the finer points of the process and its inefficiencies.

- The investor faces no complex business registration processes. However, the *Kaduna State* BIR failed to mention the MCI when asked how they identified a new businessperson. The BIR explained that an investor is expected to write to the BIR informing them of the business. However, BIR inspectors will identify any new business in due course. Furthermore, officials at both the Kaduna and Plateau State BIRs expressed surprise that some officials at their respective State MCIs told the consultants that they relay information to the BIR, which then issues the business premises permit. This lack of proper information and of transparency should be a matter of the utmost concern.

- The investor must visit the *Kaduna State* Ministry of Commerce and Industry three times to complete the Business Premises Permit process: to obtain an application; to submit the application; and to collect the authorized permit. Forms are only available at the Ministry, and the Ministry does not mail or electronically send authorized permits

- The consulting team is unclear why the *Kaduna State* Ministry of Commerce and Industry reviews the investor's feasibility study. This step lacks clarity and transparency. Is it really a feasibility study or a general business proposal? What precisely is MCI looking for in the study? The consultants did not gain complete answers to these questions. This step lacks transparency and presents a significant potential bottleneck. The Ministry of Commerce and Industry requires up to two months to respond to the Bureau of Lands with comments on the feasibility study. Clearly this is far too long a delay unless the ministry is scrutinizing every detail of the feasibility study.

  This is an area of unsure footing for the investor. Ministries of commerce and industry have neither the competence nor a proper mandate to judge the validity of a broad range of feasibility studies. Only the investing party can make the final decision based on the data presented. Civil servants may misinterpret their roles as surrogates to the investor; moreover, those less well intentioned can seize upon an open opportunity for exploiting a businessperson or a business opportunity. The *Kaduna State* MCI was unable to provide guidelines for business plan analysis -guidelines which would redirect the efforts of the well

intentioned and preclude aggressions from the predatory. If MCI wishes to certify for the Bureau of Lands the "seriousness" of a proposal—an action related to but different from analyzing its potential for profit—it must have consistent indicators for making assessments. The Bureau of Lands, just as well as MCI, could ascertain if a proposal falls within the category of allowable industries. The Ministry, however, can establish effective provisions to curtail speculation with little or no reference to a business plan.

- The lack of written guidelines is a source of concern. The one-week turnaround presumes that the application is complete and flawless, and such submissions may be the exception rather than the rule. For example, the *Kaduna State* clerk who gave the consulting team the application form, and issued a payment receipt, did not mention that company Memorandum and Articles of Incorporation must accompany the application. Information not requested is information not given. Because there is no written guide, and because personnel are not trained to provide all information necessary to complete a procedure unless they are specifically asked, the investor is likely to submit an incomplete application the first time. That the The *Kaduna State* MCI should demand proof that the business has been duly incorporated in Abuja is perfectly reasonable. However, since other agencies demand the Memorandum and Articles of Incorporation, the step is redundant.

- Since the Ministry of Commerce and Industry does not notify the investor when his permit is complete in either Kaduna or Plateau States, the investor must continue to contact or visit the Ministry to check on the permit status. Such inefficiencies have as much to do with infrastructure (post, telephones, electronic communications) as with a mentality that thrusts all responsibility for the successful business start-up upon the investor. Infrastructure notwithstanding, therefore, this mentality must improve, for even minor nuisances raise the cost of doing business.

1.4.4 Recommendations

It is the principal recommendation of the consulting team that the State-level MCIs be removed from this process, which the State-level BIR can perform on its own. Barring the implementation of this recommendation, the following measures will however also serve to ameliorate the process:

- The requirements for a feasibility study or a business plan, as well as for the investor's Memorandum and Articles of Incorporation, should be eliminated.

- All agencies involved in the investment process should work to expedite it. For the business premises permit process, the Ministry of Commerce and Industry should notify the investor when his permit is complete. While the consulting team recognizes the deficiencies of the telecommunications system, the team understands that the postal system functions well.

- Finally, to increase customer service, the consulting team recommends that State-level MCIs establish a business start-up window. The investor would visit the window for investment orientation, including a written guide detailing State-

level business start-up procedures. The team recommends that the window have no authority to question, screen, or impose upon an inquirer; the window should serve merely as an information point. An information window could decrease ambiguity over the investor's starting point and clarify the agency's central role in the investment process. The consulting team suggests that the guide use a question and answer structure to lead the investor through each step. Moreover, the window should provide all relevant forms for the MCI and possibly for State-level sister agencies.

Chapter 2: Locating

This chapter focuses on the various administrative aspects of locating a company in Nigeria. These processes include acquiring and registering rights to land, obtaining site development and building permits, arranging utility connections, and complying with environmental impact mitigation legislation.

The locating process is largely the purview of State Governments, who is responsible for land allocation and transfer, as well as (in most states), site development approvals.

The Federal Government is responsible for environmental issues and utilities provision.

Local Government Councils have jurisdiction over the following areas:[10]

- Collection of various housing & tenement levies and rates
- Construction of roads and streets
- Sewage

While the Consultants did not locate the legislative basis for these powers, Local Government Councils also appear to have jurisdiction over other locating-related matters, including the use of land outside townships as well as ground and industrial rates, certificate of occupancy (C of O) issuance, property health and safety matters, sanitation and the environment, and public utilities provision.

The administrative locating processes are thus truly federal in nature and, as a result, vary in terms of their specifics depending upon the location of one's investment. Nevertheless, it is fair to state that, regardless of one's investment location, the administrative process related to "locating" are generally inefficient, non-transparent, slow, and expensive throughout Nigeria. A detailed analysis and related recommendations follows.

2.1 Site Acquisition

The consulting team reviewed site acquisition processes in Kaduna, Plateau, and Lagos States, as well as in Abuja FCT.

In all states, a prospective investor must first locate a potential site. Typically, an investor will enlist real estate agent services to this end. The estate agent confirms land availability from the state-level Ministry of Land. The Ministry of Land is concerned with title to land and right to occupancy. It allocates unencumbered land, ensures proper zoning, and guards against projects that could have an adverse impact on the area, zone, or state.

All land in Nigeria belongs to the federal government. In the states, the governor serves as the trustee for all land in the state's confines. While Land is vested in the State-level Governments in trust, it is nevertheless an area of concurrent federal-State jurisdiction. Land may only be acquired Leasehold in Nigeria and is vested in the State, even when

[10] Nigerian Constitution, Fourth Schedule, Section 7, Art. 1

managed by traditional chiefs and private family heads. Although there is no freehold in Nigeria, and therefore no permanent ownership of land that can be bequeathed to one's heirs *ad perpetuam*, land is leased for up to 99 years for residential plots and up to 40 years for industrial plots.

The investor can acquire land in one of two ways – through government allocation of industrial plots or through private acquisition of title. Ministry of Land officials often note that the latter occurs in *isolated cases*. Kaduna State authorities, for instance, are likely to grant land to foreign investors if the investor is regarded as serious. Land acquisition from a private party is also more common in Abuja Federal Capital Territory than it is elsewhere.

The government grants certificates of occupancy under the *Land Use Act (1978),* subject to the payment of survey and registration fees. Certificates of Occupancy specify the cadastral delimitations of the title as well as ground rent owed.

Most investors prefer a commercial lease; those who do not generally prefer acquiring title from the State because private titles are rarely clean and verifiable. Clean titles belonging, for instance, to such multinational corporations as UAC and Lever Brothers are the exception; in all other cases, investors must exercise extreme caution.

To rent land from a third party title-holder, the investor must likewise complete the government approval process. If the rental period is greater than five years, approval requires the governor's signature. An investor who is simply renting space within existing premises and intends no exterior or structural modifications does not require Ministry of Land approval.

In all cases, the investor is strongly advised to consult the Town Planning Authority's master plan for urban development prior to land acquisition. The master plan sets out parcels of land for particular use – industrial, commercial, residential, agricultural, etc. Ideally, prior to seeking title acquisition approval, an investor visits the Town Planning office to study the town master development plan. The investor is also advised to verify the title and the encumbrances at the Title Registry. If he decides to proceed, the investor will be required to pay various survey, transfer and registration fees, as well as ground-rent tax.

The approval rate of Certificate of Occupancy assignment is then generally also subject to the approval of such public officers as the Director of Lands and/or the Governor. In all, between 8 and 16 steps are required of the investor to acquire land, depending on the state. According to private sector investors, the government may take anywhere from two (2) months (in less industrialized States) to several years (in the FCT, where land is scarce) to assign the Certificate of Occupancy (C of O).

The consulting team investigated the site acquisition process in several states. Although the process is similar across states, there are enough differences to warrant a close look at the steps.

2.1.1 Kaduna State

2.1.1.1 Procedure

Step 1: Investor Meets with Permanent Secretary at Ministry of Lands

The investor, particularly a foreign investor or a Nigerian investor with a substantial project, meets with the Ministry of Land's Permanent Secretary.

The investor purchases a Certificate of Occupancy application. The form costs approximately N3,000 (US$25).

Step 2: Investor Completes and Submits Certificate of Occupancy Application

The investor completes the application, attaching copies of the company's articles of incorporation and tax clearance certificate. When submitting the application to the Ministry of Lands, the investor pays a submission fee based on the project's size and nature. The processing fee for a heavy industry project, for instance, is approximately N10,000 (US$100); for a light industry project, the processing fee is approximately N6,000 (US$60).

Step 3: Ministry of Lands Dispatches Application to the Department of Survey and to the Department of Town Planning

The Ministry of Lands dispatches a copy of the application to the Department of Survey and the Department of Town Planning. Each department studies the application; they consider space, zoning, waste and effluents, and water and power supply issues. The Department of Survey and the Department of Town Planning return the application and its comments to the Ministry of Lands.

Step 4: Ministry of Lands Requests MCI's Feasibility Study Review

The Ministry of Lands forwards the investor's feasibility study or business plan to the Ministry of Commerce and Industry (MCI). MCI reviews the plan, studying in particular the project's land and utility requirements. MCI comments on the plan and returns it to the Ministry of Lands.

Step 5: Ministry of Lands Requests Kaduna Environmental Protection Agency Review

The Ministry of Lands dispatches the application to the Kaduna Environmental Protection Agency for review. This step occurs only if either the Ministry of Lands or the Ministry of Commerce and Industry indicate that the project could be environmentally detrimental. The Environmental Protection Agency reviews the application and project plans; the agency may ask the investor for additional information or action. If this is the case, the investor will follow the steps set out under the Environmental Compliance section below.

Step 6: The Ministry of Lands Issues Right of Occupancy Certificate

Having received all the comments and approvals of all concerned agencies, the Ministry of Lands issues a Right of Occupancy Certificate. The Right of Occupancy Certificate

represents a near-final authorization: indicating that the project meets all agency conditions. With the Right of Occupancy Certificate the Ministry of Lands approves investor site acquisition. The Right of Occupancy Certificate also details specific lease terms. The investor appears in person to sign his agreement of the lease terms.

Step 7: Ministry of Lands Requests Governor's Approval

The Ministry of Lands dispatches the Right of Occupancy Certificate to the governor, requesting his authorization.

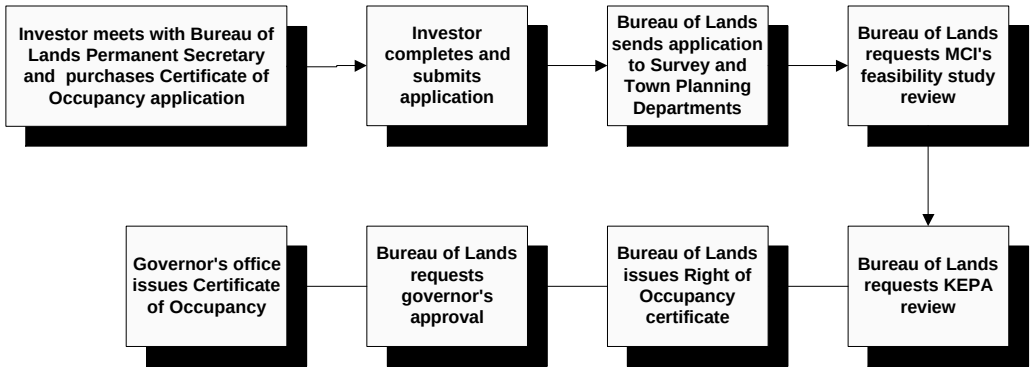
Step 8: Investor pays ground rate to Local Government

Prior to being granted his C of O. The investor who is acquiring ground title must pay local governments ground rates. In Kaduna South, for instance, the residential ground rate is of N500, the commercial ground rate of N10,000, and industrial rates are variable, but typically much higher.

Step 9: The Governor's Office Issues the Certificate of Occupancy

The Governor gives final approval of the site acquisition. Upon receiving proof of ground rate payment, he issues the investor a Certificate of Occupancy, indicating that the investor holds the land title under specified conditions and for a determined time period.

Kaduna State Site Acquisition Process



2.1.1.2 Analysis

- The consulting team is unclear about the investor's first step in the land acquisition process. In Kaduna, as the flowchart indicates, the investor might visit the Bureau of Lands before any other agency; however, given MCI's authority to scrutinize the project as well, this shortcut might be inadvisable. The land acquisition process involves numerous steps, which are neither written down nor necessarily explained to the investor in a single visit. This means that a seemingly simple step – obtaining and completing an application (which actually requires two steps, not one) -- presents the risk of rejection upon first submission. Nowhere on the application form, for example, are there instructions to append certificates or to annex a feasibility study. But the applicant who fails to

include these documents is likely to waste a trip, one of his own or of his (often costly) agent.

- In addition, the submission of multiple documents creates repetition either with the site acquisition process or downstream in the investment process. The Ministry of Commerce and Industry, for instance, requires the investor to submit the same documents for the site acquisition and business premises permit. Unfortunately, the agency does not archive the certificates from this step with the Bureau of Lands. These redundancies are both time-consuming and costly.

- The consulting team questions the feasibility study required in step 5. The consultants are not convinced that the Ministry of Commerce and Industry should review the investor's feasibility study for either the business premises permit process[11] or the land acquisition process. The Ministry of Commerce and Industry needs to determine an investor's seriousness; it is unlikely that a detailed feasibility study (containing medium or long-term projections) is necessary for such determination. Each agency will have its own concerns. The Bureau of Lands will not want to allocate valuable property to a speculator. But the agency has other means to curb speculation. It can determine a calendar of events leading towards operations and fine the investor for flagrant failure to meet targets. It can seize back the property under very clear, constitutionally defensible circumstances. It can forbid subletting, and it can begin to collect rent on the property within a relatively short period of time. All such measures are highly dissuasive of speculation, and none require in-depth analysis of project viability.

- The interagency communication evidenced when the Bureau of Lands requests a project review from the Kaduna Environmental Protection Agency is a positive process efficiency indicator. These types of efficiencies generally work in favor of all parties, not least the investor. If the senior and higher mid-level civil servants with whom the consultants met are the ones making the judgment as to whether or not KEPA should be involved, those judgments are likely to be sound. If not, it is always possible that KEPA will become involved when there is no need, or that it will be ignored when there is need. Few businesspersons invite the involvement of environmental agencies, nor do they generally welcome environmental legislation affecting their industry, but early engagement is far preferable to injunctions late in the process.

- Although interagency coordination in this process is admirable, the roles and responsibilities of each agency are unclear – especially to the investor. The consultants question the lack of procedural clarity: an investor, for instance, cannot track the status of his application over time. The only way for him to know where his application is at any given time is through special entreaty during personal visits, or—if he has established excellent rapport with the agency—through telephone calls. Responses are unlikely to be immediately forthcoming, except in the case of investments sufficiently substantial to have captured the interest of senior officials.

[11] See chapter 1; Business Registration

- The consulting team questions the step that requires the investor to appear at the Bureau of Lands to obtain the Right of Occupancy Certificate. While making a personal visit hardly seems like an obstacle to investment, neither is it in conformity with best practices. Once again, part of the problem relates to inadequate communications infrastructure, but part of it derives from status quo government business, especially in Nigeria's interior small cities.

- The right of Occupancy Certificate and Certificate of Occupancy are redundant. That the governor must give ultimate approval and issue the Certificate of Occupancy suggests more than a hint of mercantilist practice, as well as of recent military rule. Officials allege that a governor's denial is unusual, but that possibility haunts every transaction. It is not clear that the governor must publicly justify his decision. Practice in modern, democratic states severely curbs arbitrary decisions, even at the gubernatorial level.

2.1.1.3 Recommendations

- The consulting team is unclear on why the MCI should have any role at all in land acquisition and recommends its disinvolvement. At a minimum, however, pending such re-engineering, the team recommends that the Bureau of Lands coordinate with the MCI to reduce redundancy of document requests from the investor. The Bureau of Lands should reconsider its feasibility study request. Reconsidering does not necessarily imply abolishing the measure, but it certainly denotes asking precisely what information is *essential* for the Bureau of Lands to make its decisions, and then restricting its demands of the applicant to those data. It is absolutely necessary for Kaduna and other states to rationalize their requirements in terms of submission of a business plan or a feasibility study, and then to clarify exactly what is meant by this plan, or study. They should demand no more than a basic, summary business description with data on size, product, employment, and various input requirements.

- Any investor in the industrial or manufacturing sectors must prepare an EIA prior to commencing the investment process. However, at the level of the Federal Government, Nigeria should make clear this expectation. Such clarity will help potential investors to prepare.

- The Department of Lands should produce a clear procedural guide on Certificate of Occupancy requirements. The department should also design and maintain a standard checklist of steps and authorizations/ reviews. These checklists function perfectly well on paper copy and need not be computerized to be effective. A good checklist would provide the date on which an office received the dossier and the date on which it dispatched it to the next office. A checklist of this nature is a track record of each office or reviewer. It reveals bottlenecks and highlights good performance. It is a medium for improving the responsiveness of civil servants, and it provides a measure of security to an investor, who may know where his application sits at a given moment.

- Nigeria will soon have good electronic communications; therefore, public and private organizations should actively prepare to operate in the telecommunications age. Two overarching phenomena will guide future

communications: the relational database and instant communications. At the heart of institutional reengineering, the relational database enables exact, flexible, and efficient data sharing. With a database system, the Ministry of Lands would never have to send a message to the MCI or to the Kaduna Environmental Protection Agency. Instead, all agencies would track an investor's dossier in one electronic file. Instant communications is hardly new; for over a decade most African cities have used the fax machine in everyday office use. However, rational use of modern communications structures has been slow in coming to Nigeria, especially the public sector. The consulting team recommends that Nigerian government agencies recognize — at least for temporary purposes — faxed and electronic signatures. The government may deem these unacceptable for permanent files or definitive authorizations; however, faxed and electronic signatures will expedite authorizations in process. A safe, conservative policy could make all authorizations effective upon receipt of faxed or electronic signatures but provisional attendant upon a final ink signature.

- The governors need not sacrifice their ultimate authority with respect to land management—only their micromanagement. By virtue of the authority invested in them by the Constitution of the Federal Republic of Nigeria, governors may concede to the Bureau of Lands the final decisions concerning right of occupancy to accredited investors. One can attach limitations to such an authorization, and these could be in size of land, value of investment, sector of business, and so forth. The result would be more fully invested bureaus of lands, greater expeditiousness to the investment process, and no loss of real authority to the governors.

2.1.2 Plateau State

2.1.2.1 Procedure

Plateau State Site Acquisition Processes are similar to those of Kaduna State. However, they differ sufficiently on certain details to warrant an independent discussion.

Step 1: Investor Requests Expedited Service

The investor writes to the Governor, describing his project and requesting expedited service. He sends a copy of the communication to the Bureau of Land's permanent secretary.

Step 2: Governor Forwards Request to Bureau of Lands Permanent Secretary

If the Governor is favorably inclined to fast-tracking the site acquisition process, he forwards the request to the Bureau of Lands Permanent Secretary. Bureau of Lands officials stress the importance of this measure, which can cut the approval period from six months (6) or more to just three (3) months. The Permanent Secretary turns the dossier over to the Director of Lands.

Step 3: Investor Purchases Application Form

The investor purchases a Certificate of Occupancy application form from the Bureau of Lands. The application costs N3,000 (US$30) [Land Form 1-A, appended].

Step 4: Investor Completes and Submits Certificate of Occupancy Application

The investor submits a completed application form to the Director of Lands. The application includes the company's articles of incorporation and tax clearance certificate. Upon submission, the investor pays a processing fee. The processing fee for heavy industry is N10,000 (US$100); the processing fee for light industry is N3,000 (US$30).

The Bureau of Lands registers the Certificate of Occupancy application and opens a file for it. The Director of Lands is the coordinating office for the site acquisition process.

Step 5: Director of Lands Reviews Application

The Director of Lands and his staff review the application. After completing the review, the Director of Lands dispatches the application to the Survey Department and the Town Planning Department.

Step 6: Survey Department Reviews Application

The Survey Department reviews the application. After reviewing the application, the department returns the dossier, and any comments, to the Bureau of Lands.

Step 7: Town Planning Department Reviews Application

The Town Planning Department reviews the application, and returns the file with any comments to the Bureau of Lands.

Step 8: Bureau of Lands Dispatches Application to Land Use Allocation Committee

After the Survey and Town Planning Departments make their comments, the Bureau of Lands sends the application to the Land Use Allocation Committee.

The Land Use Allocation Committee reviews the application, making sure it fits within the state's land development plans. If the site acquisition involves a private transaction, the step may be skipped.

Step 9: Land Use Allocation Committee Approves Application

The Land Use Allocation Committee (LUAC) approves or rejects the application and returns it to the Director of Lands. The investor pays the Director of Lands a fee of N5,000 (US$50) upon approval. The investor signs approval of specific allocation conditions.

Step 10: Permanent Secretary Grants Right of Occupancy

The Director of Lands passes the application, the Land Use Allocation Committee recommendation, and the investor's signed acceptance to the Bureau of Land's

Permanent Secretary. The Permanent Secretary grants Right of Occupancy to the investor.[12]

The Permanent Secretary then dispatches the application to the Surveyor General.

Step 11: Surveyor General Registers Right of Occupancy

The Surveyor General looks at the approved application and attached Right of Occupancy Certificate. He registers the Right of Occupancy and the allocated plot. The Surveyor General dispatches the certificate and application to the Data Processing Unit.

Step 12: Data Processing Unit Prepares Site Plan

The Data Processing Unit prepares the site plan and attaches it to the application and the Right of Occupancy Certificate. The Data Processing Unit dispatches the application, certificate, and site plan to the Director of Lands.

Step 13: Director of Lands Prepares Certificate of Occupancy

The Director of Lands prepares the Certificate of Occupancy. The Director dispatches the certificate to the Permanent Secretary who will pass it to the Governor for final approval.

Step 14: Governor Approves Certificate of Occupancy

The Governor reviews the application and the Right of Occupancy Certificate. If he chooses to approve the application, he signs the Certificate of Occupancy and dispatches it to the Ministry of Lands Permanent Secretary.

Step 15: Permanent Secretary Delivers Certificate of Occupancy to Director of Lands

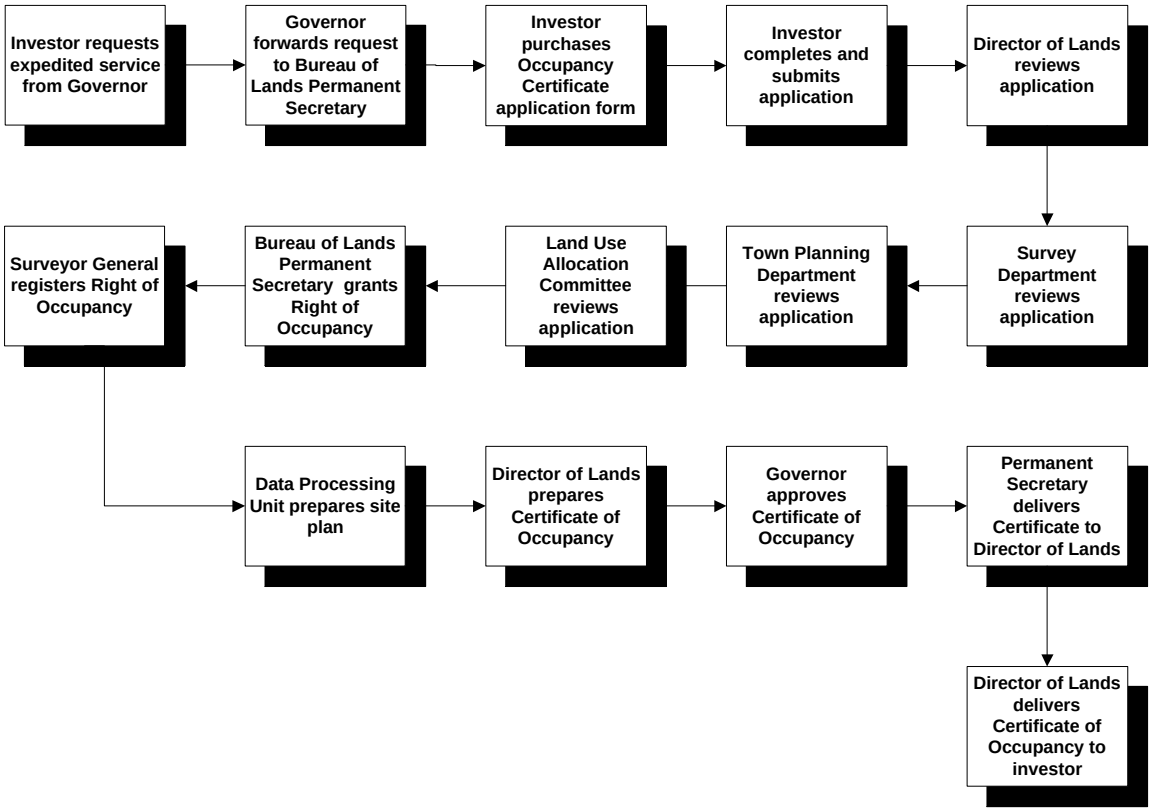
The Permanent Secretary gives the signed Certificate of Occupancy to the Director of Lands

Step 16: Director of Lands Delivers Certificate of Occupancy to Investor

The Director of Lands gives the investor the signed Certificate of Occupancy.[13] The certificate is the investor's title deed to the allocated or privately negotiated plot. The investor may now proceed with the site development process.

[12] Offer and Terms for Grant of Right of Occupancy; Land Form 7; and Acceptance Letter for Right of Occupancy, appended.
[13] Land Form 3, appended.

Plateau State Site Acquisition Process



2.1.2.2 Analysis

- Overall, the Bureau of Lands approval process is long and complex, which can retard final approval of a project. It is too easy to forget that delay translates into cost and cost affects price, or competitiveness. The investor must recover all his costs, including those incurred during the approval process. The least of these costs may be fees and payments, and the greatest may be daily loss of income, perhaps coupled with interest due on loans.

- The state governor's role lacks transparency. Like many countries, Nigeria must struggle against a well-earned reputation for placing influence above all things in securing government approvals. While some businesspersons may find solace in knowing that they can succeed by winning favor, others will be weary of this environment. Investors should not, therefore, be required to request expedited service from the governor.

- Moreover, the entire Certificate of Occupancy process seems unnecessarily cumbersome, adding four (4) steps to the land acquisition process after the Right of Occupancy has already been granted. For instance, all of the agencies that must study the application form in turn -- Bureau of Lands, Surveys, Town Planning, and LUAC -- unnecessarily lengthen the evaluation process. The importance of the review notwithstanding, given the length of approval from a single state agency, one wonders if the way in which this committee conducts the

reviews does not compromise efficiency. Within the Bureau of Lands, the consultants uncovered no indication that departments and committees are held to tight schedules for responses, or that the investor can ever learn his application's status. Moreover, the consulting team is not sure if LUAC has consistent decision-making criteria – and LUAC makes the formal recommendation for the Right of Occupancy.

- It is unclear whether or not the Surveyor General, conforms to a schedule in completing dossier registration. One should know the time or days allocated to completing this task.

- It is unclear why the Data Processing Unit must become involved to prepare and issue a site plan, rather than the LUAC, Town Planning, the Survey Department or the Surveyor General in some previous step.

- It is, finally, unclear why several steps after a Survey Department review, the Surveyor General becomes involved in registration. Both surveyor tasks could be handled simultaneously.

2.1.2.3 Recommendations

- The consulting team recommends that both the governor's office and the Bureau of Lands communicate directly with the governor, rather than the investor doing so. In fact, the governor should eliminate the step whereby the investor requests expedited service. Instead, the consultants recommend establishing fast track processing through the Governor's office -- a transparent and normal *modus operandi* with predetermined guidelines.

- To decrease the amount of time required for each relevant agency to review the application in turn, the consulting team suggests that all concerned agencies should review the application in a single-step committee decision-making process.

- The site acquisition process involves numerous steps in which the file returns to the Permanent Secretary, creating potential bottlenecks. Given the range of responsibilities a Permanent Secretary has, the consulting team recommends that he see the dossier only upon demand – to increase process efficiency. The Permanent Secretary should also have a compelling reason to overturn an approval already given.

- The Bureau of Lands and other agencies should undertake a performance analysis leading to severe reduction in approval time for investment. That a fast-track application through the Bureau of Lands should take three months is a delay not easily justified by the logical requirements of review. Such steps as Data Processing, Surveyor General registration and gubernatorial approvals should be abolished. In fact, it presumes that the application passes approximately one week in each office through which it transits. Only in a few cases, such as preparation of the site plan, does a full week seem reasonable. In other cases, such as registering in the office of the Surveyor General or going through the Director of Lands en route to the Governor, one or two days would

suffice. In fact, some steps should easily be completed in several hours. The consulting team also recommends notification via memorandum or, eventually, a Local Area Network to replace passing of a physical archive. Without loss of appropriate review and even without a computerized process, the Bureau of Lands should reduce its *normal* approval time to one month.

2.1.3 Lagos State

2.1.3.1 Procedure

Step 1: Investor Obtains Land Survey and Master-plan at Survey Department

The investor's surveyor visits the State Survey Department to obtain a master plan. Verification of the site plan, master-plan and land survey are recommended for all new investment to counteract encroachment in built-up areas avoid illegal survey changes and confirm zoning and land use designations of assigned property.

Step 2: Investor Verifies Title at Title Registry

Having verified the site plan and master plan, the investor visits the Title Registry to verify the existence of a legal title for his chosen site. This will ensure avoidance of any unanticipated issues during assignment.

Step 3: Buyer and Sales draw up Deed of Conveyance

After the buyer has satisfied himself that the title and plot are secure and regular, the buyer and seller draw up a Deed of Conveyance, typically with solicitor's assistance.

Step 4: Investor Files Application for Assignment of C of O

Certain of his transactions guarantees, the investor completes an application for the Certificate of Occupancy. He files the application the Lagos State LUAC and the Lagos State Secretariat. The application must include the following documents:

- Survey
- Deed of Conveyance
- Application form
- Tax Clearance Certificate
- Proof of payment of ground rent on other Buyer properties

Step 5: Lagos State Government Publishes Request for C of O

The Lagos State Government publishes the investor's request for a Certificate of Occupancy assignment in a newspaper, ensuring that any parties who may have any rights or liens on the property have a chance to object to the assignment.

Step 6: Governor Signs Certificate of Occupancy Approval

After the statutory period of legal publicity, the LUAC deems the assignment in order. It then transfers the file to the Governor's office. The Governor, the Governor's Permanent

Secretary, or the Attorney General of Lagos State sign approval of the Certificate of Occupancy. Signature takes approximately 48 hours.

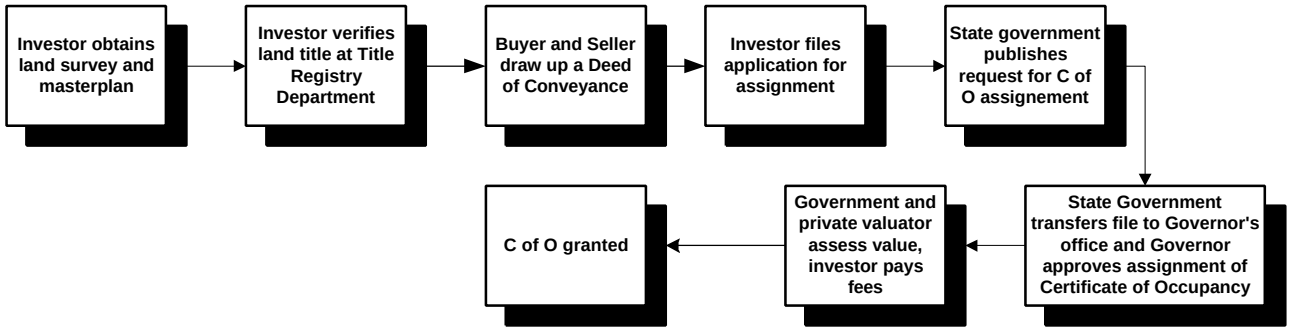
Step 7: Investor Gets Private Property Valuation, Completes Assessment and Payment of Capital Gains

Prior to collecting his C of O the investor must provide an assessment of property value, which the Government may use to determine applicable taxes. Although the Government assesses the value of the property itself, most investors also get a private Valuator to assess the property value.

Step 8: Investor Acquires C of O

After the property value has been assessed and transfer taxes paid, the investor may present himself to the Government offices and collect his C of O

Lagos State Site Acquisition Process



2.1.3.2 Analysis

- In certain respects, the land acquisition process in Lagos State appears more streamlined and rational than in certain other states. Indeed, verification at the Title Registry and Survey Department are optional, at and various other steps required in other states never occur at all (MCI, Surveyor General, Data Processing, Permanent Secretary, Dual Right of Occupancy, Certificate of Occupancy, process, etc.) On the other hand, Lagos state alone appears to require legal publicity and property valuation by government.

- Notwithstanding, the procedural efficiency noted in certain aspects of the Lagos State Site Acquisition model, the procedure remains inexplicably lengthy. The total minimum amount of time required for land access procedures in Lagos State is of at least six (6) months, with facilitation the procedures may however take up to two (2) years. Given this delay and other factors, most companies opt

for commercial leases. Commercial leases simply require a Stamp from the Registrar of Stamps if the lease is of over one (1) year in duration. The entire procedure for obtaining this stamp on the lease involves fewer than two (2) steps (drop off and pick up lease), two (2) days, and nominal costs.

- The process of obtaining property value assessment from the Government Valuator must usually (as is the case for miscellaneous other public officials) be facilitated with non-statutory fees in order for him to produce his report. This renders the acquisition process a very expensive proposition. Not counting professional facilitation fees (in practice necessary in order to track one's file), the overall transaction costs of the process are as follows:

    - Capital Gains Tax: 15% of value of property
    - Facilitation costs: 10% of value of property
    - Total costs: 25% of value of property

2.1.3.3 Recommendations

- Upon application, the LUAC should not have to require submission by the investor of such documents as the certificate or proof of ground rent payment, tax clearance, as these are government documents. As such, the onus should be on the government to network amongst its own various agencies and share such information.

- Few Common Law jurisdictions internationally require legal publicity in a newspaper for assignments of property. Indeed, the inscription in the Title Deed Registry exists for this purpose. Lagos State should consider abolishing this requirement.

- As in other states, Lagos State should move away from high-level approval of Certificate Occupancy. Indeed, if the experience of other Nigerian States is any indication the wait for the file to get into the right hands at this stage is the single longest cause of delay in the site acquisition process.

- The Lagos State Government should, whenever possible, itself communicate the completion of the process or sub-steps within it to the investor, rather than requiring the investor to track the process himself, usually at considerable professional facilitation costs.

- Finally, a proper Investor's Guide to site acquisition in Lagos State should be prepared and widely disseminated.

2.1.4 Abuja Federal Capital Territory

Virtually all of the steps in the site acquisition, registration and development process in the FCT occur at the FCDA. The FCDA has the following functions:

- Land Administration
- Land Registration and Records
- Land Surveys

- Land Planning
- Physical Planning & Design
- Engineering & Infrastructure
- Development Control

For site acquisition, the following steps must be followed:

Because Land administration by the Federal Capital Development Authority (FCDA) means that practically all land in Abuja is acquired from the State, the Federal Capital Territory of Abuja (FCT) is taken as a separate case in terms of site acquisition procedures. However, as land may, in theory, be purchased either from the State or from private parties, both procedures are discussed.

2.1.4.1 Procedure for Site Acquisition from the State

Federal Capital Development Authority (FCDA)

Step 1: Investor Obtains Money Draft

To open a "Land File," the investor must submit a Money Draft covering application and processing fees. The investor completes this step with a bank or "Aso Service" visit.

Step 2: Investor Files Documents to Open Land File

The investor opens a "Land File", by submitting the following documents to the FCDA's Department of Land Planning:

- "Request for a Certificate of Occupancy" Application Form
- Schematic Design of facilities to be constructed
- Tax Clearance Certificate
- Corporate Registration ("RC") Certificate
- N52,500 Money Draft for Application and Processing Fees
- Application Acknowledgement and Reference Number

Step 3: Investor Collects Application Acknowledgement and Reference Number

The investor collects an Application Acknowledgement and Reference Number from the FCDA "Administrator." The government grants FCT land on a quota system based on the applicant's state of origin. The FDCA does not acknowledge requests from applicants from states with filled quotas.

Step 4: Land Use Allocation Committee Reviews Request

The Land Use Allocation Committee (LUAC) considers the investor's application at a monthly meeting. The LUAC makes a recommendation to the Director of Lands, pursuant to its statutory attributions.

Step 5: Director of Lands Approves Application

This is a *pro forma* step, whereby the Director of Lands endorses the LUAC's recommendations and makes his own recommendations to the Minister of the FCT.

Step 6: Minister of the FCT Conveys "Provisional Approval"

The Minister of the FCT reviews the Director of Lands' recommendations. He subsequently endorses the LUAC allotment decision; and provisionally signs a Certificate of Occupancy (C of O), kept on record at his office. The Minister then conveys his "Provisional Approval" regarding the issuance of the C of O to the Applicant; pursuant to his attributions under the *1978 land Use Act*, pending payment of all applicable fees.

Step 7: Investor Visits Surveys Department, Pays Survey Fees

The investor visits the Surveys Department to continue application processing. The Surveys Department will conduct any applicable surveys and the investor will pay survey fees.

Step 8: Investor Registers Land Transfer, Pays Registration Fees

The investor visits the Registration Department to register the land transfer. He pays applicable registration fees.

Step 9: Investor Consults Planning Department, Pays Planning Fees

The investor visits the Planning Department to continue application processing. He pays any applicable planning fees to the department.

Step 10: Investor Records Land Transfer at Data Department, Pays Applicable Fees

The investor visits the Data Department to record the land transfer and pay applicable land transfer recording fees.

Step 11: Investor Pays Other Applicable Fees

The investor visits the Accounting Department to pay any remaining applicable fees. The following fees may apply:

- Lay-out Fee
- Premium
- Annual Ground Rent (Tax)[14]
- Processing Fee

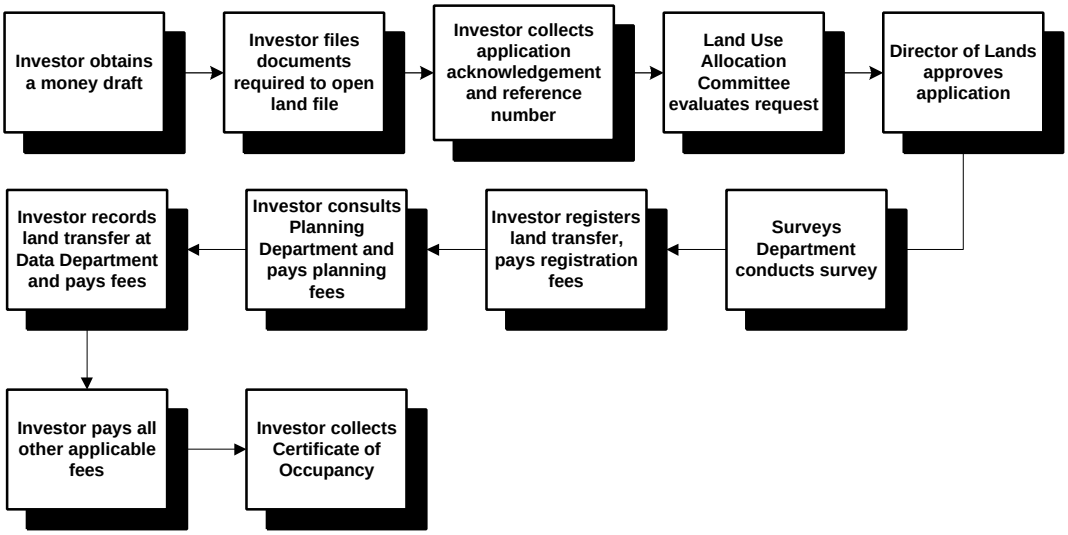
The amount of each fee varies, depending on the size and location of the land parcel. At a minimum, these fees will total 5 %of the land's value.

[14] In the FCT, ground rent is currently of approximately N2,000/$m^{2.}$

Step 12: Investor Collects Certificate of Occupancy

Once the FCT Minister of the FCT has signed the investor's Certificate of Occupancy, the investor collects it from his office. The investor must present a passport as a form of identification; he must also present proof of payment of all applicable fees.

Abuja FCT State Site Acquisition Process



2.1.4.2 Procedure for Abuja FCT Private Party Site Acquisition

The investor may also obtain land from a private party; this option is less risky than acquisition from the State. However, as with site acquisition from the State, acquisition from a private party requires a Certificate of Occupancy and therefore, FCDA approval.

Step 1: Investor Submits Title Registry Search

It is recommended that, prior to beginning assignment of C of O procedures, the investor consult the Title Registry to assure himself of the seller's title and of its unencumbered status. To complete a title search, the investor must submit the following documents to FCDA's Land Planning Department, which will conduct the search:

- Simple written request to the Director of Land Planning
- Fee of N5,000

Step 2: Investor Collects Title Search Results

One day after filing a title search request, the investor may collect the requested information from the Land Planning Department.

Step 3: Investor Requests Survey Search

It is also recommend that the investor consult FCT survey maps and plans to verify boundaries, dimensions, and land use. To do so, the investor submits a written request to the FDCA Surveys Department and pays a fee of N5,000.

Step 4: Investor Collects Survey Search Results

One day after filing the survey search request, the investor may collect the requested information from Survey Department staff.

Step 5: Investor and Seller Draw up Deed of Conveyance and Power of Attorney Agreements

Once the investor is comfortable with the title and land use status of the identified parcel, he draws up a "Deed of Conveyance" Assignment Agreement with the seller.

The investor will have a Power of Attorney (PoA) agreement drawn up at the same time; under this agreement, the seller grants the buyer PoA over the parcel pending completion of full Certificate of Occupancy assignment.

Step 6: Investor Registers PoA with FCDA's Lands Department and Applies for Registration of C of O Assignment

To guarantee his rights, the investor registers his Power of Attorney Agreement with the Lands Department. This is a *pro forma* step, whereby the Director of Lands endorses the transaction and forwards it to the Registration and Data Departments. The investor pays a N50,000 fee for this service.

At this time the investor will file the following documents:

- Letter of Application for Registration of Assignment of C of O, addressed to the Director of Lands;
- Deed of Conveyance; and
- Photocopy of C of O.

The Lands Department forwards these documents to the FCDA's Valuation Department for preliminary processing.

Step 7: Investor Registers PoA with Registration Department and Pays Registration Fees

The investor registers his Power of Attorney Agreement with the Registration Department. The investor pays applicable registration fees.

Step 8: Investor Records PoA at Data Department and Pays Applicable Fees

The investor records his Power of Attorney Agreement with the Data Department. The investor pays applicable recording fees.

Step 9: Valuator Inspects Property

Upon receiving the Assignment Documents from the Lands Department, the Valuation Department assigns a valuator to inspect the property for assessment of applicable

transfer fees. The investor must organize a site inspection with the assigned valuator and transport him to the site.

Step 10: Valuator Files Report

The valuator files a report with the Valuation Department. The Director reviews the report.

Step 11: Investor Pays Applicable Fees

The investor schedules a meeting with the Valuation Department Director to discuss valuation report contents and collect a bill for applicable fees. The investor pays the following fees:

Capital Gains Tax:	5.0% of sales price
Registration Fee:	2.5% of sales price
Stamp Duty:	2.5% of sales price
Total Fees:	**10%** of sales price

The department immediately issues a payment receipt and stamps as proof of payment.

Step 12: Investor Registers Land Transfer and Pays Registration Fees

The investor registers the land transfer at the Registration Department and pays applicable fees.

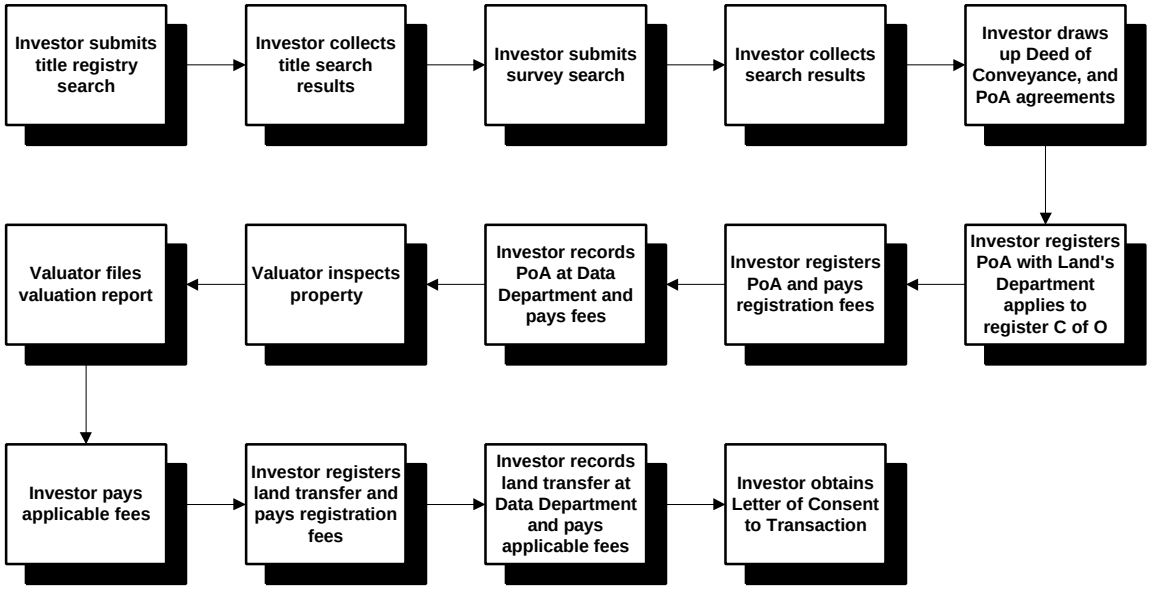
Step 13: Investor Records Land Transfer at Data Department and Pays Applicable Fees

The investor records the land transfer at the Data Department and pays applicable fees.

Step 14: Investor Obtains Letter of Consent to Transaction from Minister of the FCT

The investor collects a Letter of Consent to the Transaction and C of O, signed by the Minister of the FCT, from the Office of the Minister. The investor must present a passport as proof of identification, as well as proof of applicable fee payment.

Abuja, FCT Private Party Site Acquisition Process



2.1.4.3 International Best Practice

Several lessons may be learnt from international practice in land use. A few are detailed below:

2.1.4.3.1 Guidebook on Land Acquisition and Titling

A key technique for reengineering administrative procedures is the dissemination of information on the land market, as well as on real estate acquisition and development procedures, in order to enhance land market and development procedures transparency. The World Bank notes that insufficient and asymmetrical information on the real estate market discourages investment. In fact, asymmetrical information encourages speculation and thereby reduces land available for investment. The government plays a key role in disseminating accurate and timely information to prospective investors. Many countries, including Canada, Indonesia, and Thailand, have successfully implemented an aggressive land information dissemination strategy.

2.1.4.3.2 Registering of titles for the purposes of increasing the availability of land on the market

Developing countries tend to suffer from speculative real estate development. When investors face substantial start-up periods, speculators often beat developers to the inexpensive land.[85]

Progress in the area of property rights improves real estate markets. Conversely, if a government cannot readily transfer land titles to new owners, investment productivity declines. Without exclusive land titles, investors have little incentive to risk market entry, and increase land productivity. Under ”best practice” private property legislation, land is assigned to specific individuals or enterprises, though national and local governments may impose land use restrictions. Fewer restrictions increase the incentives to investment.

Governments must assign underutilized land clear, marketable titles in order to attract the necessary investment for the development of a modern market economy. Secure land titles increase investor comfort and promote lending by credit institutions through development of the mortgage market –to the benefit of investment, productivity and increased revenue.

Titling has the additional advantage of ensuring the investor security vis-à-vis any subsequent boundary, security or other challenges.

In developing countries, several factors decrease title security.

- Poorly adapted legislation and legal restrictions on title issuance;
- Absence of technical institutional capacity for the processing resulting in mediocre delineation and multiple deeds for the same plot;
- Lack of procedural transparency;
- Absence of a legal framework capable of resolving boundary conflicts; and
- Arbitrary expropriation.

[85] Salazar et al, *op.cit*

While initiatives to increase title security are expensive, the benefits are worth the cost. In Thailand, untitled land has been valued at just 43-83% of the value of titled land, depending on its proximity of a city center. In 1989, in Jakarta, Indonesia, untitled land was estimated as worth just 61-72% of the value of titled land, again depending on the land's proximity to the city center.

International experience indicates that countries which establish a body –a real estate listing organization for instance -to collect and disseminate information on the country's real estate market substantially increase land market efficiency, real estate valuation, and tax revenues.

2.2.4.4 Analysis

- The leasehold-only land tenure system has spared Nigeria problems often associated with traditional developing country land claims. However, demand for FCT land exceeds supply and land control monopoly has created some problems. For instance, FCDA no longer directly allocates land without presidential permission – nearly impossible to obtain. In fact, some indicate that the government allocates 80 % of available plots to FCDA officers through *prête-noms* – further exacerbating land scarcity. The consultants are unable to verify the allegation, but note that FCDA was among the most secretive and user-unfriendly of agencies visited. . The consultants attempted to speak with more than 10 FCDA officers; only two –reluctantly- provided any information on site acquisition and development procedures.

- The consultants found other procedural problems with the FCDA site acquisition process. For instance, investors must wait an average of 1-3 years to obtain the Conveyance of Provisional Approval for Assignment of State Lands from the Minister of the FCT (If an investor is well connected or has provided adequate incentives to his facilitators, the wait is shorter). The consultants' findings are largely consistent with the recent FIAS report findings. Focused on non-oil investment, the FIAS report, found that Ministerial approval for site acquisition takes between 2-6 years. This process precedes the Certificate of Occupancy, which requires another 1-3 years to obtain (If Certificate of Occupancy procedures are expedited, the investor will wait between 3-6 months). In all, site Acquisition in the FCT requires between 6 months and 9 years to complete.

Furthermore, the State land acquisition process is inefficient in many respects:

- First, separating the Application filing from the fees payment steps at the Planning Department rather than allowing simultaneous filing and payment;

- Second, separate, additional fees payment visits to the Data Department and Accounting Department, where only the Planning need be involved in fee collection;

- Third the requirement that the investor return to collect his Application Acknowledgement and Reference Number rather than on-site issuance, or having the information mailed to the investor.

- Fourth, the role(s) of the Minister (and perhaps of the President) in land sales.

The consultants find that acquiring land from a private party is equally difficult, for instance, in the following respects:

- First, the separate PoA and Deed of Assignment registration steps, where a single step would suffice for both.

- Second, the role of the Data Department, which adds no value to the process and should presumably be handled internally, at some later stage.

- Third, the transfer fees, at 10%, would appear to be prohibitive, and induce fraud.

- Fourth, the inefficiency of the valuation process. Private sector sources note that they waited at least 12 months to obtain property valuation from the FCDA's Valuation Department. If the investor hires a facilitator, the process requires less time. Moreover, the private sector indicates that after the valuation site visit is complete, they wait at least 3 months for the bill – again, unless facilitated.

- Finally, sources further noted that the Minister of the FCT requires 6-24 months to complete the Letter of Consent; since the procedure is not time-regulated, the Minister completes the task at his discretion.

The entire site acquisition process from a private party requires between two (2) and four (4) years to complete. The private sector sources indicate that they typically require legal services to follow-up and apply pressure at each step. Legal service usually cost between 5–15% of the entire transaction fee.

2.1.4.5 Recommendations

- A full review of the FCT's Title Deed Registry, to ensure compliance of files with legal requirements, should be conducted.

- The principles of time-bound decisions and of deemed approvals should be introduced throughout all of this process' steps.

- The Minister of the FCT's role (as well as that of the President) in issuing Certificates of Occupancy should be reviewed. In Lagos State, the government has delegated Certificate of Occupancy granting authority to the Commissioner of Lands. The consulting team recommends a similar solution for the FCT.

- The NESG believes that international best practice should be applied to the development of new legislative drafts on land use, applicable across the country.

- Computerization of procedures (including such measures as a public G.I.S. for consultation of Title Deeds and Survey Maps) is also recommended by the NESG.

- All the payment steps should be collapsed and transacted at the Planning or Registration departments, at the same time as filing or registration.

- Application acknowledgement and reference numbers should be issued on the spot or sent later by mail, not result in the necessity for the investor to return to the FCDA's offices.

- All document registration should be permitted to occur simultaneously.

- The Data Department should perform its functions, after the completion of transfers, on the basis of internal information, rather than requiring that the investor perform data-related functions and *pay for them!*

- Transfer fees should be reduced to a level the market will bear.

- FCDA officials and the public should be provided with clear public information guidelines, well disseminated and posted throughout the building.

- FCDA officials should be provided customs service training.

- A strict schedule and time limits for valuation inspections should be set out and bound by "deemed approval" deadlines.

2.2 Environmental Impact Mitigation

Under Schedule II of the Nigeria Constitution, the Federal Government of Nigeria has exclusive jurisdiction over environmental issues. The Federal Environmental Protection Agency (FEPA) is the primary Federal Government Institution responsible for ensuring environmental compliance. FEPA is located in the Ministry of the Environment.

While the consulting team interviewed FEPA officials regarding the environmental compliance process, the team also investigated environmental compliance procedures in several states. In most of them, environmental compliance is typically an integral part of the site development process. After an investor has gained right of occupancy, he proceeds with the building permit and general site development process; depending on the project, this process might also require environmental compliance procedures.

According to the consultants' state investigations, FEPA sets nationwide policy and collects data from the states as well as from areas under its surveillance. While FEPA noted a specific administrative procedure for environmental compliance, state practice appears to vary somewhat. In Kaduna and Plateau States, for instance, an investor may begin the environmental compliance process prior to commencing the building permit process. Though not required, this may speed the site development process. In Abia State, on the other hand, the environmental compliance process is an integral part of the site development procedures – and will therefore be covered within the site development section. The investor does not, therefore, commence a separate environmental compliance process prior to gaining site development approval; instead, the relevant agencies interact to assure environmental compliance while approving the site development plans.

The procedural steps that FEPA indicates, investors must follow are detailed below. After the FEPA process, several states' processes are mapped.

2.2.1 FEPA

2.2.1.1 Procedure

Federal Environmental Protection Agency (FEPA)
Ministry of the Environment
P.M. B265 Garki,
Abuja, FCT
Contact person: Prof. P.A.H. Dixon

The following section will focus on the mandatory Environmental Impact Assessment (EIA) that every business must conduct in order to get a license. The Federal Environment Protection Agency (FEPA) developed this National EIA framework following the recommendations and requirements cited in the *1992 Decree No.86*. The consultants' analysis is however based on both the FEPA procedural guidelines for EIA and on the aforementioned Decree, as well as on interviews with FEPA officials, whose practice differs somewhat from the legal theory, especially as regards practice-derived procedural "sub-steps".

According to the FEPA Procedural Guidelines, the Investor must undergo a process of 8 steps in order to get an EIA Certificate.

Step 1: Investor Submits Project Proposal

If the Investor decides to embark on any development project that falls into category I or II of EIA Projects List,[15] he needs to notify FEPA through a Project Proposal[16] and by completing the "EIA Notification Form". The Applications Fee is of N10,000 and all Applications should be addressed to the Director General/ Chief Executive of FEPA, at the Abuja Headquarters. It is also, important to note that FEPA demands a N250,000 deposit for processing the Application. Upon receipt, FEPA issues a Registration Number and gives the Investor the necessary information to continue the process.

Step 2: FEPA Starts Screening Process

Once the Project's Category[17] has been assigned, FEPA makes the Initial Environmental Examination (IEE). The Screening Report will be forwarded to the investor within *10 working days* of the receipt of the Project Proposal.

[15] An extensive list of project types can be found in the FEPA *"Procedural Guidelines"*.
[16] The information and the documents required for the Project Proposal are outlined in *Annex B* of the *"FEPA EIA Procedural Guidelines"*.
[17] Cat. 1 concerns Environmentally Sensitive Areas, Cat. 2 Agricultural Development and Industry and Infrastructure, and Cat. 3 are projects that are expected to have a positive impact on the environment (Institutional, Health, Family Planning, Educational and Environmental Programs)

Step 3: Investor Performs Scoping Exercises

Based on the Screening Report, the Investor performs the Scoping Exercises that are necessary to the EIA. He then needs to submit "Terms of Reference" (TOR), which state the scope of the EIA study to FEPA. However, FEPA might sometimes demand a preliminary assessment report and/or Public Hearings and specific studies to determine the scope and the TOR of the EIA study.

a) Investor Completes "Scoping" Phase Advisory Consultation

During an investor's "scoping" phase, prior to construction or operations, an investor may consult directly with FEPA to learn about environmental requirements and to gain advice on mitigating a project's environmental impact.

While the initial consultation is not required, the government strongly recommends that an investor make this his first step in the site development process. The initial consultation, in fact, often enables an investor to expedite the compliance process. During the consultation, for instance, investors will discover that a FEPA-driven "Ministerial approval" fast-track process exists for small projects. The fast-track process curtails certain environmental compliance requirements. Conversely, an investor will learn that most projects that create or emit dust, fumes, and other pollutants require an Environmental Impact Assessment (EIA).

During the consultation, FEPA advises the investor of various informational guideline booklets for sale at the Ministry of the Environment Store.[18] Investors can purchase the following information sources:

- Decree: N2,500
- Guidelines for 5 different Sectors: N1,500 each

b) Investor Consults with Land Surveyor

A certified private environmental engineer or a specialized scientific consultant must conduct any EIA required by law. FEPA has a list of agency-accredited firms and individuals, but does not publish the list. In practice, the investor must thus first consult a land surveyor. All land surveyors know which firms are accredited. While not mandatory, consultation with a land surveyor may simplify the process since it indirectly ensures compliance with a FEPA requirement.

[18] The Ministry of the Environment Store has several locations: the old FEPA building in Abuja; the Surelere FEPA Office in Lagos; and the Port Harcourt FEPA Office.

Step 4: Investor Drafts First EIA Report

Following the agreement of FEPA on the TOR, the investor must conduct the EIA study and send 15 copies of the First EIA Report for FEPA review.

a) Investor Has EIA Completed

The investor hires a firm or individual to complete an environmental impact assessment. Most investment projects require an EIA.

b) Investor Submits EIA, Ministry of Environment Vetts EIA

Once the EIA is complete, the investor submits it to the Ministry of Environment. The Ministry of Environment has an evaluation committee vett the EIA findings. The Ministry of Environment may either find the results satisfactory or unsatisfactory, or the ministry may request additional data from the investor. The investor must cover the cost of collecting any additional data required by the Ministry.

Step 5: FEPA Performs Reviews

Based on the First EIA Report, FEPA chooses the form of the review and informs the investor within 15 working days: it may be an In-House review, a Panel Review, a Public review that lasts 21 days (which includes FEPA and members of the public), or a Mediation. The review itself may be performed within 1 month after the review method has been chosen. FEPA will also visit the site.

Step 6: Investor Writes Final EIA Reports

If FEPA judges conditions satisfactory during the Review Process, the investor has 6 months to write the Final EIA Report based on FEPA's comments and recommendations. FEPA's evaluation of conditions may involve the following:

a) FEPA Conducts Site Inspection

FEPA may conduct a Site Inspection to clarify any outstanding technical or scientific issues regarding the project and EIA.

b) Local Government Publishes Investor's EIA

The relevant local government publishes the EIA in a local newspaper for 30 days. This step exists to elicit preliminary community response. The newspaper publication also notifies the community of a public hearing on the project.

c) Local Government Holds Public Hearings

The relevant local government holds public hearings to gain Community input regarding the project and any environmental issues it may arise.

d) Local Government Submits Public Hearing Reports to Ministry of Environment

The local government submits the public hearing reports to the Ministry of the Environment's Evaluation Committee within 30 days of the hearings.

e) FEPA Conducts Selective Re-inspections

Following new facts uncovered through the Public Hearing Reports, FEPA may conduct a Site Re-inspection. Re-inspections seek to clarify outstanding technical or scientific issues.

f) FEPA Grants Authorization to Proceed with Operations

Having fully satisfied itself of all potential project impact ramifications, FEPA will either clear the project or reject it.

Step 7: FEPA Technical Committee issues Environmental Impact Statement

If the FEPA Technical Committee approves the Final EIA Report, it will issue the Environmental Impact Statement (EIS) within a month of the Final EIA Report acknowledgment.

Step 8: Director-General/Chief Executive of FEPA issues EI Certificate

Upon receipt of the EIS, the Director-General/Chief Executive of FEPA issues the Environmental Impact Certificate, which the Investor will submit to the National Rolling Plan, who will permit Project Implementation. However, a final charge, covering all expenses made in the process, must be paid entirely paid-up before the Certificate is issued.

Step 9: FEPA conducts Commission and Post-Commission Functions

The Project is to be realized during a specific, commissioned period of EI Certificate validity. If not, the investor needs to seek revalidation of the Environmental Impact Certificate at FEPA by submitting an up-to-date EIA Report. During implementation, FEPA will monitor activities to ensure compliance with mitigation measures and report specificities, and also to assess environmental impact in order to improve the EIA process. This may involve the following procedures:

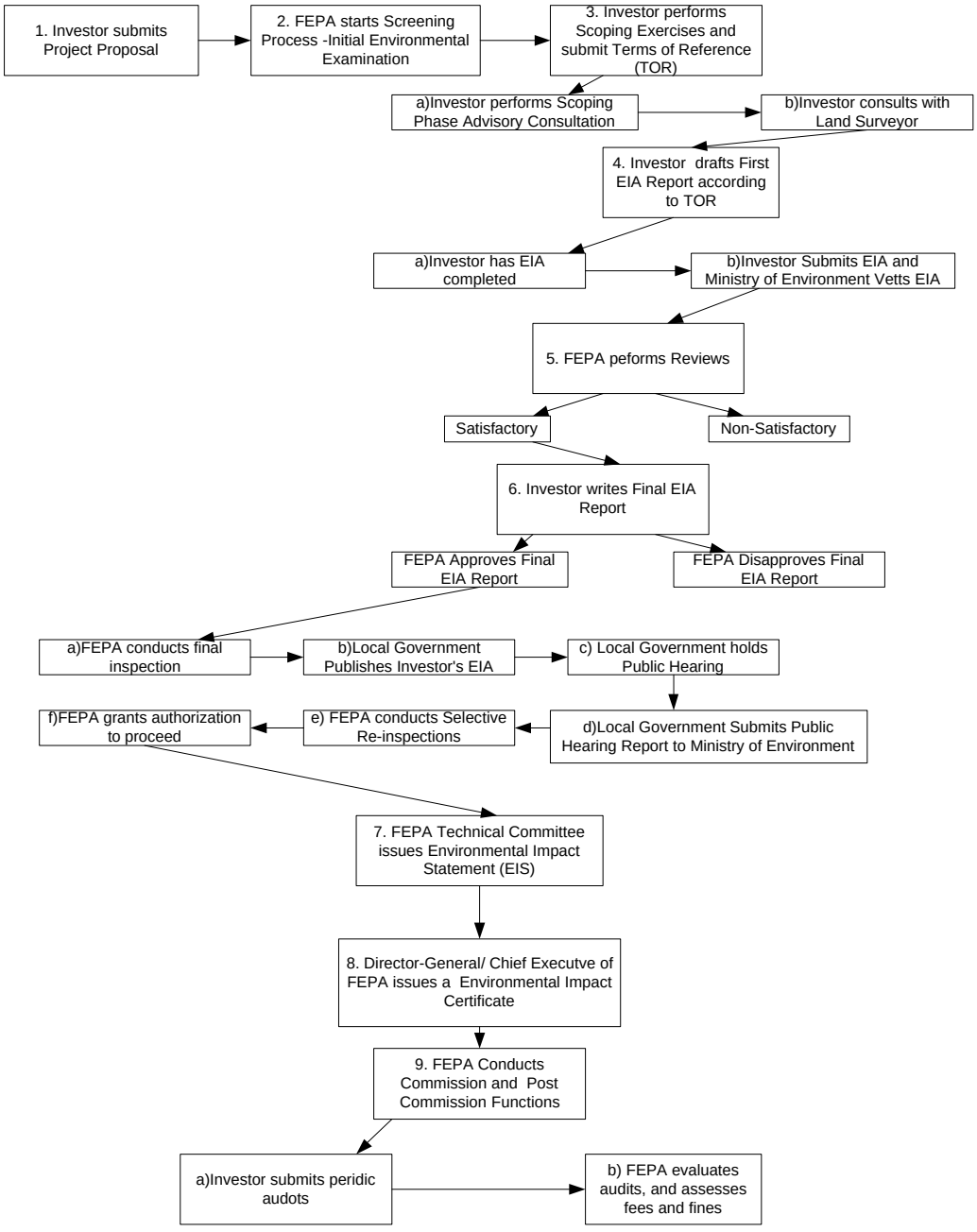
a) Investor Submits Mandatory Audits to FEPA

Each company that submitted an EIA at start-up must undergo a FEPA audit every 2-3 years. The investor must again engage an accredited firm or individual to complete the EIA audit. The investor must submit the audit report to FEPA.

b) FEPA Evaluates Audit and Assess Applicable Fees

FEPA assesses all periodic audits for any applicable environmental compliance fees or fines.

FEPA Environmental Impact Mitigation Process



2.2.1.2 Analysis

- The Environmental Impact Assessment process appears somewhat convoluted, with multiple redundant steps. No doubt designed with the best intentions regarding environmental protection and investment facilitation, the process may fall a little short of the mark. Step 3, 6, and 7, in particular, do not seem well defined.

- Although compliance is three times greater than it was five years ago, most non-oil investors still evade their environmental obligations, including EIA requirements.

- Part of the problem is information. Although FEPA has made certain efforts to address the issue (FEPA Seminars; Information Leaflets; etc.), information dissemination regarding environmental compliance remains woefully inadequate in Nigeria. Compounding the problem, there are no functional FEPA offices outside of Abuja, Lagos, and Port Harcourt. FEPA claimed that additional offices would be operational by April 2001.

- Complicating matters, the Ministry of Industry has its own independent views on regulating environmental standards of industry in Nigeria, which sometimes go as far as imposing moratoria on certain activities without prior consultations with FEPA or the Ministry of the Environment.

- Investors, and even FEPA, find the environmental compliance process convoluted. In fact, FEPA indicates that the public hearing process is "a potential roadblock with political overtones." According to FEPA, administrative processing time for the environmental compliance procedure is of approximately three (3) months.

- The reluctance of FEPA to publish the list of accredited environmental engineers seems bizarre. Why accredit firms if this accreditation may not be made known? The current process of referral to a Land Surveyor ads unnecessary time and cost to the investor.

- One investor in Lagos State reported that private EIAs were not, in practice, required, merely payment of FEPA for its site visit. If this is true, clearly, the system is again interpreted "liberally" by FEPA.

- The consulting team is surprised that FEPA has devised an extra-legal "fast track" compliance procedure for small projects. The fast-track system clearly departs from the EIA procedure set forth in the Law.

- The consultants also note audit process irregularities. One investor indicated that both state and federal authorities annually audit his company for environmental regulation. The Nigerian Constitution however limits environmental regulation to the federal government. Moreover, FEPA claims that it only actually requires biennial or triennial audits. Finally, the same investor indicated that fines are *negotiable* – suggesting that the agency is less concerned with environmental security than with financial issues.

2.2.1.3 Recommendation

- Given the scope to redundancy, the scoping exercises should occur before the submission of the project proposal and the FEPA screening process.

- If the project was properly scoped and screened in the preliminary stages of the process, there is no need for the drafting and evaluation of a "First Report," the team recommends just one EIA Report.

- FEPA and the Ministry of Environment should provide more accurate information regarding investors' environmental obligations. This will result in greater regulatory compliance and protection of the environment. Contradictory statements with regard to Federal/State roles, EIA, Site Inspections, and FEPA and Ministry of the Environment audits create a sense of anarchy and extra-legal behavior.

- Coordination with the Ministry of Industry must be improved. The fast-track compliance process should be formalized in the Law. This would provide both a legal basis for current FEPA practices and a formal short cut around the cumbersome public hearings requirements for small projects.

- Unfortunately, given Nigeria's weak enforcement capabilities, a dramatic reduction of up-stream environmental compliance procedures in favour of "best practice" post-establishment audits is not the solution. While FEPA's personnel may be well trained and equipped, and benefits from cooperation from the Manufacturing Association of Nigeria, in-depth coverage outside of major urban agglomerations remains a problem, particularly with respect to cottage industry.

- Finally, more FEPA offices and stores should be opened around the country.

2.2.2 Kaduna State

2.2.2.1 Procedure

Kaduna State provides an example of a fairly rigorous state-level compliance process.

The Kaduna Environmental Protection Agency (KEPA) protects the citizenry and the natural environment from disturbance and harm, especially from industrial sources. KEPA is an independent organ of the state with full legal authority in the areas of its jurisdiction. KEPA, like its counterpart bureaus in other states, refers to FEPA on projects involving heavy chemicals, refineries, textile manufacturing, petroleum, and automotive manufacture or assembly. It should be noted that this procedure differs from what FEPA indicates as the appropriate, legal procedure.

Three agencies can direct prospective investors to KEPA: the Ministry of Commerce and Industry (MCI), the Bureau of Lands, and KASUPDA. An investor could go to KEPA at an early phase of the investment process, and may make this a first stop. In states visited, the urban planning and building authority requires an EIA with original submission. Hence, even though KASUPDA can and does send investors to KEPA, the wise investor will come to KASUPDA with the KEPA procedures at least underway.

Step 1: Investor Requests Environmental Compliance Approval

The investor submits written request to the Kaduna Environmental Protection Agency (KEPA) for environmental compliance approval. The request must include a number of attachments, including an environmental impact assessment and the project building plans. The Kaduna Environmental Protection Agency may also request the following documents:

- Feasibility Study
- Right of Occupancy Certificate
- Corporate Memorandum and Articles of Incorporation

At submission, the investor pays an application fee. The fee varies according to the business size and type.

Step 2: KEPA Assigns Officer in Charge

The agency director assigns the application to a specific officer who will be responsible for approving or rejecting the application. The officer in turn passes the application to a field inspector.

Step 3: Field Inspector Reviews Application

The field inspector reviews the application and schedules a site visit.

Step 4: Inspector Conducts Site Visit

The field inspector visits the site to determine that the project follows site plans and will be environmentally compliant. This site visit is coordinated with the Federal Environmental Protection Agency (FEPA).

Based on the application review and site inspection, the inspector notes his findings in a formal report. He submits this report to the officer in charge of the application at the Kaduna Environmental Protection Agency.

Step 5: Officer Recommends Approval from General Manager

The officer in charge submits the inspector's report to the FEPA General Manager and to FEPA, recommending either approval or rejection. The General Manager studies the inspector's report and either authorizes agency approval or rejects it. In some cases, the General Manager requests additional information from the investor, to support his application.

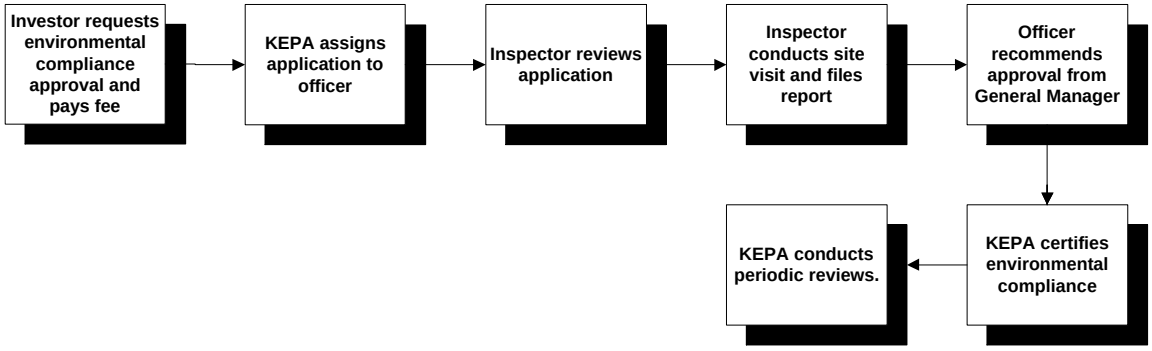
Step 6: Kaduna Environmental Protection Agency Certifies Environmental Compliance

The agency notifies the investor of environmental compliance approval. The notification stipulates any conditions the agency sets out for the project.

Step 7: Kaduna Environmental Protection Agency Conducts Periodic Reviews

According to KEPA, the agency requires an environmental compliance review and certificate of compliance renewal every three years. The renewal process costs N10,000 (US$100). The renewal process requires an environmental audit report. If the investor is not environmentally compliant, he faces fines and operational suspension.

Kaduna State Environmental Impact Mitigation Process



2.2.2.2 Analysis

- The foremost question for the team is why there is a KEPA and how its role differs from FEPA's. Indeed, such an agency would, *a priori*, appear to represent an unconstitutional State encroachment in an area of exclusive federal jurisdiction.

- The entire process takes one (1) month minimum, but can take as long as two (2) months. If the investor has not met basic environmental compliance conditions, however, his application can be stalled indefinitely.

- It is not certain whether KEPA requires the Right of Occupancy from the investor in order to start the environmental compliance process. If KEPA does require the Right of Occupancy, then clearly no application should go to KEPA until the procedures with the Bureau of Lands are virtually complete. Since the Bureau of Lands' authorization can easily take as long as six months, it would be an expensive loss of opportunity for the investor.

- There appear to be no guidelines detailing what KEPA expects the EIA to cover. This creates potential bottlenecks if the EIA does not cover issues and concerns that KEPA subsequently wants to see addressed.

- The consulting team questions KEPA's request for a detailed building plan. Why should KEPA ever need more than drawings of those aspects of the industry that show the sources of potential pollution? In most cases it would seem that drawings of buildings are unnecessary. Moreover, KASUPDA is the only agency with the internal competence and mandate to review building plans.

- The consulting team finds KEPA's assignment of the file to one officer commendable. It is usually efficient to have one person responsible for an investor's dossier in any given agency. Only at KEPA, in Kaduna State, did the consultants in fact encounter assignment of a dossier to a desk officer. One would hope that KEPA informs the investor of the assignment and that the officer in charge is available to handle all questions pertaining to KEPA's review.

- It is encouraging that KEPA arranges for a site visit early in the review. KEPA laudably coordinates the site visit with FEPA to avoid multiple disturbances to the investor. The consulting team questions, however, the site visit requirement for allocated plots. The state government has already selected allocated plots for industrial use; the Bureau of Lands subsequently determines if a prospective business conforms to the plot's intended use. KEPA, if it wants to question Lands' judgment, should make a site visit when the plots are determined, not when they are being allocated.

- In terms of KEPA certification, a one-month delay is not insignificant for an investor, especially when after that month he may be asked to provide additional information. Many firms will be prepared to set up operations in total conformity with environmental legislation, and they should not have to incur the costs of delay because an agency cannot reasonably accelerate its internal procedures.

- Investors and KEPA are at odds in terms of the frequency of audits (specifically, on whether they are conducted every 1, 2, or 3 years). This remains an area of concern to the consulting team, as KEPA must abide strictly to its statutory obligations in this respect, so as to avoid being overly intrusive to normal business operations.

2.2.2.3 Recommendations

- First and foremost, State and Federal roles in the environmental area in Nigeria must be clearly defined in practice to comply with the Constitution. The investor will then be confident that his operating in a country grounded in the Rule of Law.

- The consulting team strongly recommends that KEPA prepare a guidebook describing the application process and offering parameters for EIA preparation in Kaduna State, as they differ from federal requirements. This Guide should also clearly detail all state-specific compliance and audit requirements.

- KEPA should review its requirement to study project-engineering drawings. Except in the case of pollutant or emissions control systems, KEPA would do better to let KASUPDA review building plans.

- KEPA must clarify what it means by "feasibility study." KEPA needs a partial description of the business, rather than a feasibility study of its presumed viability. In fact, if KEPA defines clearly the elements that it wishes to constitute the EIA, it should not need to see any feasibility study or business plan at all. KEPA, like other agencies, should require of an investor no more than it needs to help him and to fulfill its mandate.

- The consulting team recommends that site visits be reserved for private, non-allocated plots—unless zoning has already determined that these plots are acceptable for industrial use. Furthermore, KEPA should not require a site visit—at least not at the investor's expense. KEPA might consider a two-step internal process. First a review of the EIA, then correspondence with the Bureau of Lands to ensure proper zoning or allocation of land. If the investor has first come to KEPA, this agency can *prescribe* the kind of zone into which the industry must be located.

- Eliminating the site visit would abridge the process of approval from KEPA. The site visit would in any event be more useful after operations have begun, to ensure that the industry meets the conditions KEPA has clearly specified in its approval.

2.3 Site Development

The consultants reviewed the site development procedures in Abuja FCT, Kaduna, Lagos, Abia, and Plateau States.

All presented some basic similarities, and were more or less variations on the following model:

- Step 1: Investor draws up and submits plans
- Step 2: Title Registry confirms ownership
- Step 3: Planning Department reviews plans for land use
- Step 4: Engineering Office reviews plans for building structure
- Step 5: Development Control conducts Permit approval-related site visit
- Step 6: Development Control conducts periodic visits during works

Many unnecessary steps are however grafted unto this model in the different states. For instance:

- Abuja FCT: Requires a land survey
- Lagos State: Requires multiple Stamp Duty and fee-related steps
- Plateau State: Requires multiple inspections
- Abia State: Requires an Environmental Health Review

As a result, some states require as many as 16 steps to issue a development permit. The overall process is inefficient and slow, as well as generally non-transparent and expensive.

A detailed review of these processes, including analysis and recommendations for reform, follows:

2.3.1 Kaduna State

2.3.1.1 Procedure

Kaduna State Urban Planning and Development Authority (KASUPDA), like its counterpart bureaus in other states of Nigeria, has oversight of all residential, commercial, and industrial development and building in the State site development process, the KASUPDA approves development and building plans, and awards development and building permits. An investor must follow the steps below in petitioning KASUPDA for site development authorizations:

Step 1: Investor Requests Building Permit from KASUPDA

The investor submits a written request to KASUPDA's General Manager for a building permit for his site.[19] The request must include the following documents:

- Proof of the Right of Occupancy
- The Certificate of Occupancy

[19] Planning Form 1, appended.

- Tax Clearance Certificate
- Feasibility Study
- Architectural drawings -- three copies
- Engineering drawings -- three copies
- Building Plans
- Site analysis report
- Approval from KEPA

The investor must submit three copies of both the architectural and engineering drawings. The agency will return two copies of each document at the completion of the process. A Nigeria-accredited town planner must prepare the Site Analysis Report. Likewise, a Nigerian Society of Engineers-registered engineer must complete the drawings. Although no similar requirement was made explicit for the architectural drawings, it would be prudent to have them similarly recognized, if not actually prepared.

The investor pays a processing fee, calculated according to residential, commercial, and industrial projects. The agency has standardized the fees and makes them available for public review.

Step 2: Director of Planning Completes Initial Review of Application

The KASUPDA General Manager gives the application to the Director of Planning, who completes an initial review of site development plans. He signs the attached internal processing form and then passes the file to the agency architect.

Step 3: KASUPDA Architect Reviews Application

The KASUPDA agency architect reviews the site development plans, particularly scrutinizing the architectural drawings. If he approves the plans, he signs the internal processing form and passes the file to the agency engineer.

Step 4: KASUPDA Engineer Reviews Application

The agency engineer reviews the application, focusing on the engineering drawings. If he approves the site development engineering plans, the agency engineer signs the internal processing form and returns the application to the Director of Planning.

Step 5: Director of Planning Completes Full Application Review

The Director of Planning, typically a town planner, considers any questions or comments that the agency engineer or architect have made on the application. If all technical departments have approved the project, the Director of Planning returns the file to the General Manager. The internal review process is complete.

Step 6: KASUPDA Confirms Right of Occupancy and Certificate of Occupancy with Ministry of Lands

The agency confirms with the Ministry of Lands that the investor has obtained the Right of Occupancy and the Certificate of Occupancy and has completed the site acquisition process.

Step 7: KASUPDA Completes Site Visit

An agency inspector completes a site visit of the proposed project site. The inspector submits a site visit report to the General Manager.

Step 8: General Manager Reviews Application and Site Visit Report, and Issues Building Permit

The General Manager reviews the application and any accompanying comments from the internal review process. He also reviews the site visit report. The General Manager approves or rejects the building permit application.

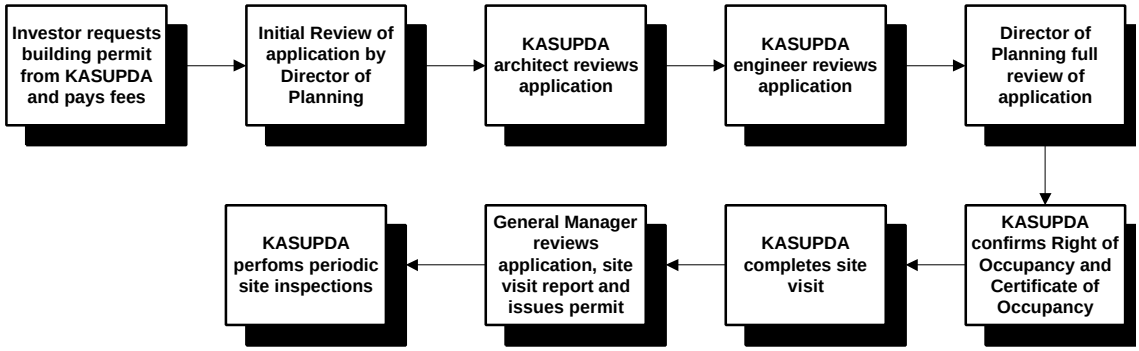
The General Manager may ask the investor to submit additional information, or to modify his plans. If the general manager does not require additional information or modifications, he will simply determine specific conditions to which the investor must adhere in project construction. For instance, the general manager may request that the investor adhere to particular construction timelines, as well as certain construction or utilities requirements.

KASUPDA issues the investor a building permit. The agency keeps one copy in its files, and another is posted at the construction site.

Step 9: KASUPDA Officers Periodically Inspect Site

KASUPDA officers inspect the site periodically during construction to ensure that the investor has posted the permit conspicuously and that all conditions are being met.

Kaduna State Site Development Process



2.3.1.2 Analysis

- It is repetitive that the investor must include registration and tax documents from Abuja in his building permit application. Since the application dossier includes the investor's Right of Occupancy granted by the Bureau of Lands, KASUPDA

knows that the investor's articles of incorporation and tax documents have already been reviewed by at least one, if not two, state agencies.

- Moreover, if the investor has arrived at KASUPDA with the referenced documents, the agency should not have to verify these documents with the Bureau of Lands. In fact, the consulting team finds insufficient justification for requiring the Right of Occupancy, let alone both the Right of Occupancy and the Certificate of Occupancy.

- The two (2) distinct reviews of the file by the Director of Planning and Separate review by the General Manager appear to be redundant.

- The consulting team questions the purpose of the site visit for allocated plots, which have already been zoned. For private transactions involving non-allocated land, a site visit is not necessary if the land has already been used for similar purposes. All required site visits should occur only for specific reasons: for instance, when power, water, or waste requirements are significantly greater for the new occupant.

- If the plot is allocated, the site visit should have been made at the time of zoning. Again, there may occasionally be justifications for a visit at the time of the application, especially for heavy industry. Otherwise, KASUPDA should not waste investor time and money to make a visit that will provide no new or useful information.

- KASUPDA noted that the site development process requires between one (1) week and several years to complete. This is an uncomfortable spread of time, and one would suppose that the longer delay would only occur in the case of very heavy industry, where utility requirements are high, where the potential for environmental hazards are great, or where the drawings are of exceptionally poor quality and rectification is slow. However, the one-week turnaround is probably also all too rare.

2.3.1.3 Recommendations

- The consulting team recommends that KASUPDA eliminate its requirements for submission of the incorporation and tax clearance documents, the Certificate of Occupancy, and proof of KEPA approval.

- In terms of the internal review process, the consultants recommend eliminating the two (2) Director of Planning reviews of the file, as well as the General Manager's and having that final review be performed by the Director of Planning instead. This will overall eliminate two (2) steps and one actor from the approval process altogether.

- The consulting team recommends that the site visit not be an automatic part of the process; it should be made, as KASUPDA experts deem necessary.

- Of all the investment approval processes, site development is most technically complex, and requires the longest amount of time. But durations should not be

open-ended: An applicant should be allowed a reasonable, but not indefinite, time to respond to requirements or issues, after which his application must be re-opened from the start. An office, or agency, should also have mandated times for completing its procedures, after which the applicant receives some benefit for his lost time. This compensation could be a waiver of the processing fees, a guarantee of fast-track authorization from that date on, *de facto* approval, or some combination of these assurances.

2.3.2 Lagos State

2.3.2.1 Procedure

Step 1: Architect and/or Chartered Quantity Surveyor Draw up Plans

The investor hires an architect and/or a chartered quantity surveyor to draw up complete project construction plans.

Step 2: Investor Completes EIA Procedures

Once plans are complete but before they are submitted, an EIA must be conducted.[20] Investors often improve their site development chances by hiring FEPA to complete an environmental impact assessment, rather than hiring a private company. If the investor contracts FEPA, he must pay for the official's necessary transportation and other expenses.

Step 3: Investor Completes Stamping Process for all Documents

Before submitting the EIA and the building plans to the State Planning Department, the investor must also have all documents stamped at the Stamp Duty Office.

Step 4: Investor Submits Documents to State Planning Department for Approval in Principle

After completing construction plans and an EIA and having the documents stamped, the investor files the following documents with the Planning Department:

- Application form
- C of O
- EIA[21]
- Architectural drawings, signed by an accredited Nigerian architect
- Structural drawings, signed by an accredited Nigerian structural engineer
- Mechanical drawings, signed by an accredited Nigerian mechanical engineers
- Electrical drawings, signed by an accredited Nigerian electrical engineer

It should be noted that all pavement changes and other such issues are dealt with through this same single application.

[20] See above section in chapter 1 on Environment Mitigation
[21] Idem.

Step 5: State Planning Department Evaluates Documents

The State Planning Department reviews the submitted drawings for their compliance with environmental, architectural, engineering and legal requirements. If compliant, the file is then ready for further processing by the local government and by the Governor's office.

Step 6: Investor Files Documents with Fire Department for Approval in Principle

In theory, once the state government departments have approved the file, the investor submits his application to the relevant fire department for approval. According to a chartered surveyor, however, this step is rarely completed; investors are typically able to resolve this step with a simple payment.

Step 7: Investor Submits File to Governor's Office for Approval in Principle

The investor submits all pre-approved plans and drawings to the Governor's Office for approval in principle.

Step 8: Governor's Office Publishes Intent to Work, Grants Approval in Principle

After receiving a request for approval in principal of works, the Governor's office publishes the intent to work. If no objections are raised, the Governor's office issues an approval in principle.

For an additional fee, the Governor's office will also destroy all illegal construction on the site and evict all squatters preceding commencement of works.

Step 9: Planning Department Assessor Determines Statutory Fees

Once the investor has obtained all necessary approvals, a Planning Department Assessor determines applicable building fees. Building fees are based on project dimensions.

Step 10: Investor Pays Statutory Fees and Obtains Final Approval

The investor pays all requisite fees to the Planning Department Assessor. The Planning Department then issues an approval, indicating when construction may commence.

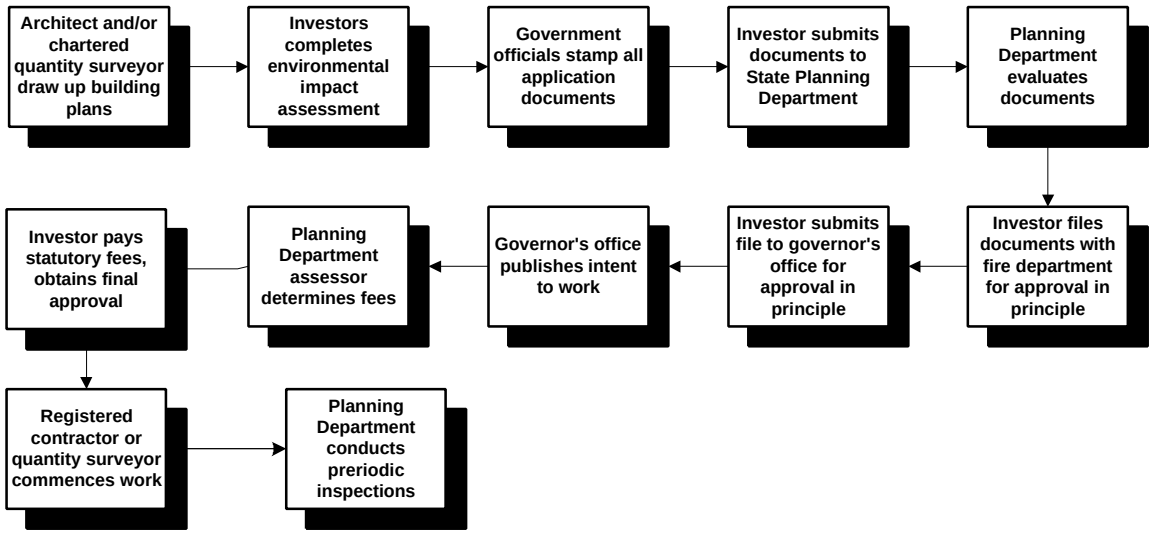
Step 11: Planning Department Conducts Periodic Inspections

The investor must employ a registered contractor or quantity surveyor to complete construction. During the construction, phase the investor must display all construction approvals; he must maintain building plans/drawings on-site for Department of Planning inspectors to consult during periodic inspections.

The investor must complete all project construction in accordance with the Lagos State Building Code, which ensures structural, fire, and electrical compliance. When the construction team encounters pipes and wires, the investor typically pays statutory "re-routing charges" and other non-statutory charges to the utility company. In practice, on-site structural inspections rarely occur. Instead, inspectors limit their activities to *pro*

forma verification of paperwork, which is usually facilitated by the investor's contractor or quantity surveyor for a nominal fee.

Lagos State Site Development Process



2.3.2.2 Analysis

- In many respects, the Lagos State site development process is better than that in certain other states. Indeed, the light documentary load, the lack of redundant review steps, the absence of a pre-works site visit, and Final Approval by the Director of Planning rather than, say a Permanent Secretary or the Governor, are all commendable. Nevertheless, a number of sources of administrative inefficiency remain.

- The Stamping Procedure adds no value to the permitting process and adds unnecessary steps exclusively in the pursuit of government revenues.

- Certain documentary requirements such as the Certificate of Occupancy, could however be eliminated. It should be incumbent upon government to liaise with its various Departments.

- No other state visited by the consultants (apart from Abuja FCT) requires a visit to the Fire Brigade. It is unclear why the case should be different in Lagos State. Indeed, few jurisdictions internationally require an additional step in construction permit processing for this purpose.

- Why the Governor is involved in site development permits is unclear to the consultants. Such micromanagement of state affairs seems completely outside of the scope of such a high office's functions.

- Many of the procedural steps could be collapsed through a single, committee-based decision.

- Finally, with a good architect, getting plans approved may take 3-6 months. The process must be "facilitated" and associated costs depend on the size of the project but in no case superior to N500,000. This is both too long and too costly.

2.3.2.3 Recommendations

- The requirement to present Certificate of Occupancy at filing should be eliminated. A mere lot and square number should suffice to reference one's C of O filed at the Title Registry.

- The Stamp Duty procedure, which exists for revenue purposes only, should be eliminated. Payment can be made at some other point in the process, e.g. upon collection of permit from the Director of Planning, etc.

- The Fire Brigade Review should be eliminated. If deemed essential, the Fire Brigade's opinion should be given in a committee hearing.

- The Gubernatorial approval should be eliminated, as no role for the Governor's office should exist in this process.

- True Limits should be placed on the process, providing the investor with "deemed approvals" when no answers are given with specified timeframes.

2.3.3 Abia State

2.3.3.1 Procedure

In Abia State, the Town Planning Authority shepherds the development application through the various state and local bodies that have authority over the approval process. The site development process includes an environmental compliance sub-process, handled by the Environmental Health Office.

Step 1: Investor Has Site Development Plans Drawn Up

The investor commissions site development drawings, which must be completed by a licensed architect or engineer. The government does not require an Environmental Impact Assessment (EIA) for small projects.[22] Instead, investors must have a site analysis project report prepared for small projects. The Town Planning Authority requires a professional town planner to prepare the site analysis project report. The government requires all large-scale residential and commercial projects, and all industrial projects – small or large – to include an EIA.

Step 2: Investor Submits Site Plans to Town Planning

The investor must submit the following documents to the Town Planning Authority:

- Site Development Plans
- EIA or Site Analysis Report

[22] Small projects include all residential and commercial developments with fewer than five floors.

- Certificate of Occupancy
- Tax Clearance Certificate
- Corporate Registration Certificate, for a corporate body

Step 3: Town Planning Determines Fees Owed, Investor Pays Fees

Investors typically pay all fees owed to the Town Planning Authority upon submission of the site development plans. As soon as the investor submits the plans, the office determines the fee amount. The investor can pay fees immediately at the Town Planning Authority's cashier window, located in the same building complex. The cashier immediately issues a payment receipt. The Town Planning Authority retains the original receipt and gives the investor a copy. The investor pays the following fees to complete the Site Development Process:

- Inspection Fee: variable, depending on project size
- Charting Fee: N250
- Registration Fee: N250
- Fencing Fee: based on project size
- Interim Development Rate: N6,000 for residential and commercial projects; variable rate depending on size for industrial projects
- Other Fees, if applicable (including Stages Permit Fee and Physical Fitness Permit Fee)

Step 4: Town Planning Authority Preliminary Approval

After granting a preliminary approval of the site development plans, the Town Planning Authority dispatches the plans to the Town Engineering Office. The Town Planning Authority only sends Town Engineering those plans involving physical structures.

Step 5: Investor Pays Fees to Town Engineering Office

Once the plans arrive at the Town Engineering Office, the investor must go there to pay a number of fees. Fees are based on the building size and type. [23]

The investor must pay these fees to the Town Engineering Office cashier window, which is located in the same building as the engineers' offices. The cashier immediately issues a payment receipt.

Step 6: Investor Photocopies Receipts and Submits Them to Head Engineer

Before the process can continue, the investor must photocopy the receipts and return copies to the Town Engineering Office engineer as proof of payment.

[23] The following fees, for instance, apply to an office block: N5,000 registration fee; N1,500 staging fee; and N1,000 commencement fee.

Step 7: Town Engineering Office Studies Plans

The Town Engineering Office has three separate individuals who study the structural plans. The office either approves or rejects the structural aspects of the site development plans.

Step 8: Town Engineering Returns Plans to Town Planning Authority

After Town Engineering studies the structural plans, the office dispatches them to the Town Planning Authority. This completes Town Engineering's role in the site development process.

Step 9: Town Planning Authority Completes Site Inspection

Town Planning Authority officers travel to the investor's site and complete a site inspection.

Step 10: Town Planning Authority Completes Report

After completing the site inspection, the Town Planning Authority documents its findings in a report. The report conveys the authority's opinions vis-à-vis the planning aspects of the project.

The Town Planning Authority dispatches plans to Environmental Health Office.

Step 11: Environmental Health Office Studies Plans

The Environmental Health Office checks the site development plans for compliance with health laws. The Health Office is primarily concerned with issues relating to health of the employees at the site, and general environmental health. Health officers check the plans for adequate ventilation, room size, drainage, etc.

Step 12: Environmental Health Office Completes Site Visit

Within twenty-four hours of receiving the plans from the Town Planning Authority, the Health Office contacts the investor to arrange a site visit. Health Office staff conduct a site visit, accompanied by the investor and his contractor.

Step 13: Environmental Health Office Approves Plans

If the Environmental Health Office is satisfied with the site development plans and the inspection, a staff member signs and stamps the plans, indicating approval.

If the Health Office is not satisfied with the site development plans, the office drafts a report regarding the plan's defective components. The office dispatches the plans and the report to the Town Planning Authority, which returns them to the investor for amendment. Alternatively, the Health Office notifies the investor directly.

The Environmental Health Office does not charge any fees for processing the site development plans. However, when the investor commences construction, according to the Environmental Health Office, he must pay an excavation permit of N1,000.

The Health Office then returns the site development plans to the Town Planning Authority.

Step 14: Town Planning Authority Gives Final Approval

Based on approval from the Town Engineering Office and the Environmental Health Office, Town Planning gives its final approval to the site development plans.

The Town Planning Authority then dispatches the plans to the Local Government Chairman, recommending he approve the project.

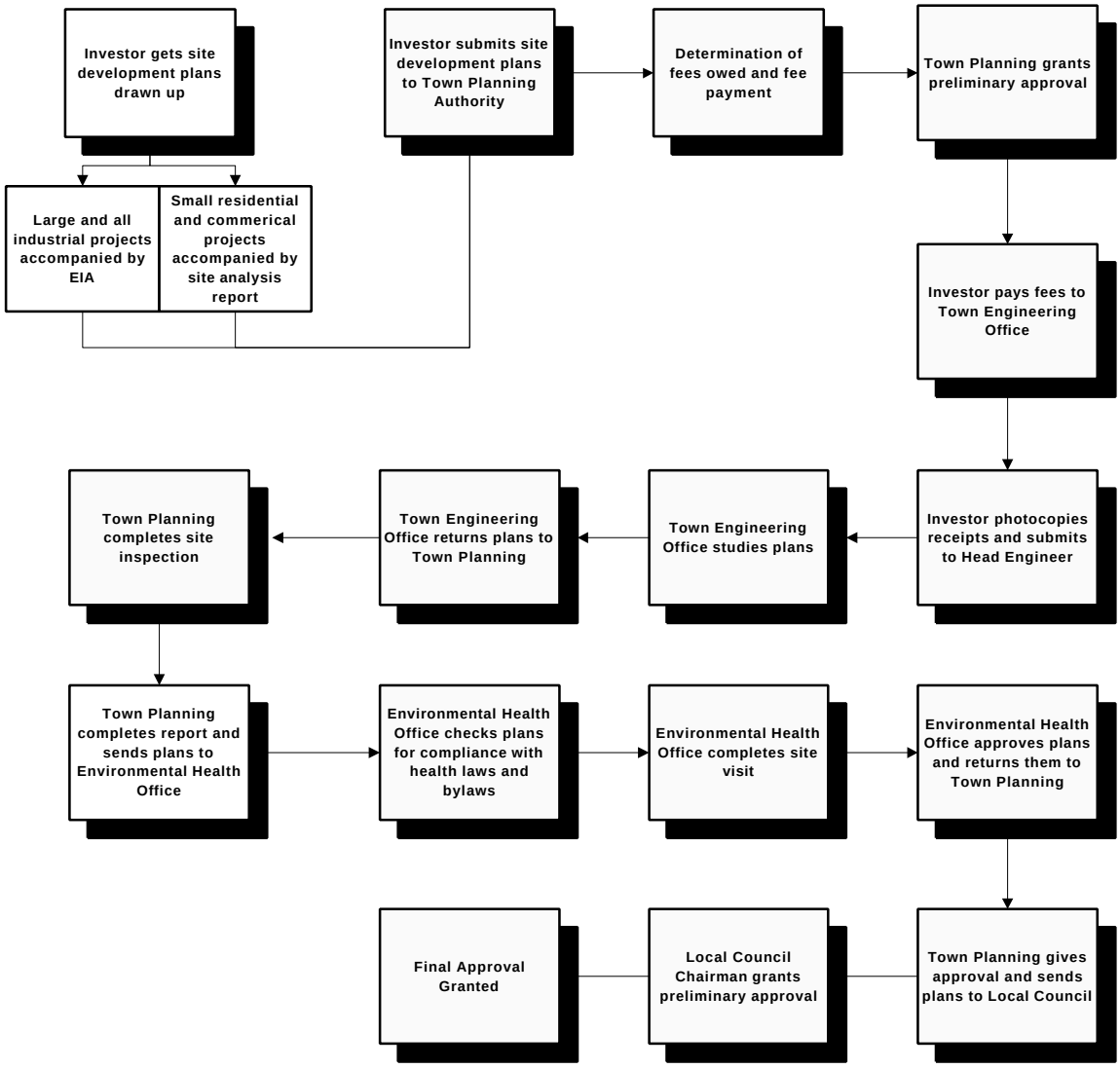
Step 15: Council Chairman Grants Approval

The Council Chairman's approval is usually a mere formality based on the recommendation of the Town Planning Authority.

Step 16: Town Planning Grants Final Approval

The Town Planning Authority grants final approval upon completion of all procedures related to permit acquisition.

Abia State Site Development Process



2.3.2.2 Analysis

There is considerable overlap concerning the various responsibilities of the government parties involved in the site development process. There is also disagreement over which agency has the authority to collect which fees and to demand certain documents.

- The Town Planning Authority indicated that with one exception, an investor pays all necessary fees at the Town Planning Authority. According to the Town Planning Authority, for instance, Town Engineering has jurisdiction over one investor fee: the Local Government Fee.[24]

[24] The investor pays this fee, between N1,000 and N2,000 depending on the project, to the Engineering Office when the site development plans arrive there. According to the Town Planning Authority, the Local Government Fee essentially represents a service fee for using the local government engineers. The Town Planning Authority is supposed to have an

- Both public and private sector representatives confirmed that Town Engineering requires additional fees from investors. In fact, they indicated that Town Engineering collects fees for which the Town Planning Authority is responsible – creating a double payment burden for investors. There is a sense that local governments across the country are finding ways to gain additional revenue, and that collection of fees in connection with site development related aspects of the investment process is an example of this practice. The consulting team learned, in fact, that local governments sometimes attempt to legitimize these revenues through bylaws, usually later determined to be *ultra vires.*

- The private sector points out that the Environmental Health Office's excavation fee is not a registered fee, and therefore, is not legal. There are other examples of agencies creating fees to increase local government revenue; for instance, one company that the consultants interviewed faced a "roofing fee" for its buildings.

- Unfortunately, the investor is the one left with the short end of the stick, paying overlapping fees, and facing a slower process because he has to complete additional procedural steps related to payment and receipt procurement.

In addition to confusion over fee collection, there is considerable variance over the actual steps of the site development approval process:

- Some private sector representatives indicated, for instance, that the site development approval process begins with a letter and plan submission directly to the town council, rather than with a consultation with the Town Planning Authority.

- Moreover, private sector representatives explained that they must also deal directly with the town council prior to commencing construction. The investor sends the Town Council Chairman a letter requesting approval to begin construction. With the letter, the investor attaches the original plan approval granted by the Chairman. The Chairman forwards these documents to Town Engineering, who initiates all subsequent construction inspection visits.

- According to the private sector, the town engineers only enter the process when the investor is ready to construct, not prior to this point, as indicated above.

There is also considerable disagreement over the amount of time it takes each agency to complete its steps in the process of site development. As the flow chart illustrates, the site development approval process depends on a number of agencies, and their activities are highly interdependent.

- According to Town Engineering, the agency can typically approve or reject the plans within three days of receiving them. According to the Town Planning Authority, the law allows Town Engineering a minimum of three weeks to study

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internal engineer to study and approve structural site development plans; however, due to funding shortages, the Town Planning Authority uses the services of Town Engineering.

the site development plans. The Town Planning Authority indicates that this is a typical time frame.

- There is a similar discrepancy regarding the assessment of the amount of time required for plans to move through the Environmental Health Office. According to the office, it completes its processing of site development plans within 48 hours of receiving them. According to the Town Planning Authority, however, Environmental Health typically takes three weeks to complete its study of site development plans.

- According to the Town Planning Authority, the Chairman's approval takes anywhere between 1 week and 2 months. If the Chairman is out of town, no other individual may sign approvals on his behalf. If the site development plans are held up at the Chairman's Office for more than a month, however, the Town Planning Authority asks his office to return the plans. It is unclear what authority the Town Planning Authority has to then move forward with the site development process. A Town Planning Authority officer stated that he could sign if the plans stay for more than a month in the Local Government Chairman's office without signature.

- The private sector notes that the entire site development approval process typically takes four weeks at best – and this involves considerable pressure placed on all agencies. They noted that companies sometimes pay unofficial fees at various steps in the process to gain site development approval within one week. A Local Government officer also intimated that unofficial fees and "help from the inside" would considerably speed up the steps in that office, and also assure a positive outcome.

Finally there are procedural inefficiencies throughout the process, including the following ones:

- Mulitiple fee payment steps (Town Planning and town Engineering);
- Multiple Inspections (Town Planning and Environmental Health);
- Abia State is the only state with an Environmental Health Review;
- Four (4) distinct steps involving some form of clearance from Town Planning (e.g. Plans and Fees, Inspection, and 2 Final Approvals); and
- An unnecessary Final Approval by the Local Council Chairman who is not qualified in these matters.

2.3.3.3 Recommendations

- The consulting team strongly recommends that the Abia State Government publish a site development process guide. A guide will benefit investors and government officials alike, clarifying the precise roles and responsibilities of the various agencies. Moreover, the guide should set out a fee schedule, and indicate which agencies are authorized to collect particular fees. The consultants suggest that the guide also approximate the amount of time each step requires. Both fee and time schedules will help the investor determine the approximate site development expense.

- The consulting team recommends that final Council Chairman approval be eliminated or, at least, not be held up by his absence. While the current process allows the Chairman to delay authorization for up to a month, due to his absence or another reason, the consultants suggest the time limit be reduced. If the application is in order and no outstanding concerns exist, the Town Planning Authority should have full proxy authority to grant final approval within a week of the application arriving at the Council Chairman's office.

- The team recommends eliminating the Environmental Health Office's Excavation Permit, which is clearly outside of the Office's jurisdiction. In fact, in light of FEPA's reviews, the State should consider abolishing the environmental health review altogether.

- The team recommends consolidating fees payment into a single step, managed either by Town Planning or Town Engineering, more probably the latter.

- The team recommends joint Planning-Environmental Health inspections.

- The team finally recommends consolidating Town Planning clearances, by eliminating "Final Approvals" in favor of clearance by the way of a positive Joint Inspection Report.

2.3.4 Plateau State

2.3.4.1 Procedure

The Jos Metropolitan Development Board (JMDB) handles site development only for some areas of Plateau State, including the capital city. However, because virtually all of Plateau State's external investment is reviewed by this Board, the report will focus exclusively on its role in the area.

Like KASUPDA and its counterpart organs in other states, the JMDB is responsible for approving the construction of buildings, and the renovation of existing edifices. Its stated goals are the attainment of harmonious growth, environmental quality, properly-capacitated infrastructure, and acceptable and improving living standards.

When applying for a Site Development Permit in Plateau State, the investor must complete the following steps:

Step 1: Investor Purchases Building Permit Application Form

The investor purchases a building permit application form[25] from the Jos Metropolitan Development Board's Development Control Unit.

Step 2: Investor Completes and Submits Application

The investor submits a completed application to the General Manager. The application includes the following documents:

[25] Application for Building Plans, Processing and Site Inspections; and Building Plan Submission Form, appended.

- Memorandum and Articles of Incorporation
- Feasibility Study or Description of Business
- Tax Clearance Certificate
- Right of Occupancy
- Certificate of Occupancy Certificate
- Site Plan Survey Map from the Bureau of Lands
- Site Development Plan (scaled 1:500)
- Site analysis report prepared by a registered town planner (for small projects)
- Environmental Impact Assessment (for industry)
- Building plans (architectural, engineering) in triplicate

Step 3: Investor Pays Processing Fee to Director of Planning

The General Manager gives the application to the Director of Planning. At this point, the investor pays a processing fee. The fee may be several hundred US dollars. The agency plans to increase the fee considerably in the near future.

Step 4: Director of Planning Assembles Technical Review Team

The Director of Planning assembles a team of technical reviewers who will study the plans and make comments on them. The group of inspectors varies according to the project: For some projects, for instance, a health inspector is unnecessary; while for others the engineer is not required.

Step 5: Technical Officers Carry Out Site Visits and Write Reports

Each technical officer studies the application and performs a site visit. Each technical officer must review the application and visit the site within 48 hours of receiving the file. Each officer prepares a report for the Director of Planning. The reports are normally very brief and are presented on standard forms.

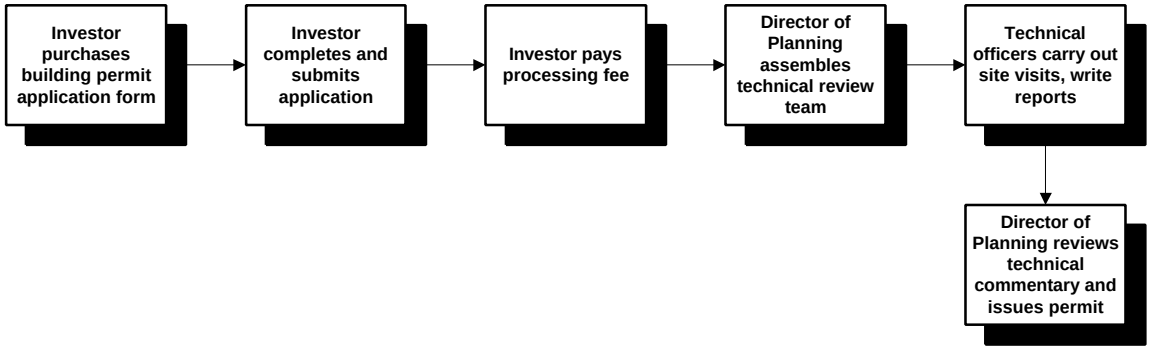
Step 6: Director of Planning Reviews Technical Commentary

The Director of Planning reviews the technical comments. He either approves or rejects the building permit application.[26] If he rejects the application, the Director of Planning must provide the reasons to the investor within three business days.

Otherwise, the Director of Planning issues a building permit to the investor. The entire process typically takes two weeks if the investor has submitted a complete and accurate application.

[26] Approval of Building Plan, appended.

Plateau State Site Development Process



2.3.4.2 Analysis

- The Plateau State site development process is a model of efficiency and superior to that of other states visited. It is among the most organized agencies the consultants visited.

- JMDB must be strongly commended for having produced *A Handbook of Guidelines* for development control standards and regulations. This useful guidebook presents a schedule of fees, planning, and site requirements; architectural requirements; and description of general procedures and submissions. JMDB claims that it will issue a building permit within ten days if the applicant's submissions are complete and in conformity with standards.

- The consultants reviewed three sources of information concerning the documentary attachments to the Application. The three sources agree on the Right and Certificate of Occupancy (title deed) and all site and building plans. The *Handbook* adds everything else except the Memorandum and Articles of Incorporation. One official stated unequivocally that JMDB does not ask for the feasibility study, another said that it does ask for a description of the project to assist in analysis, and it will ask to see the Memorandum and Articles of Incorporation. The discrepancies do not seem serious, especially in view of the brief turnaround for approval.

- The *Handbook* says that the application should be addressed to the attention of the Chief Town Planning Officer, but JMDB staff said it should be presented to the General Manager. As the *Handbook* was published in 1996, this study follows the more recent advice.

- It is unclear whether various inspections are joint or separate.

- The Application processing fees seem excessive.

2.3.4.3 Recommendations

- The consultants recommend eliminating the requirements of: the feasibility Study; the Right of Occupancy Certificate; and the Site Survey Map (which JMDB can collect itself).

- The *Handbook* should be updated.

- Fees should be reviewed with an eye to reducing them.

- Inspections should be conducted jointly by the various technical agencies concerned.

- JMDB is the only agency that indicates a strict schedule for processing applications. The measure is extremely commendable. Agencies in all states would do well to explore this time-management model.

2.3.5 Abuja, Federal Capital Territory

The FCT is taken as a separate case in terms of site development because of the role of the FCDA to the exclusion of Local Government and Councils. Both the re-zoning and site development procedures are discussed in this section.

2.3.5.1 Procedure for Re-zoning

A change of Land Use is subject to the following process:

Step 1: Investor Submits Application for Change in Land Use

The investor submits an application to the Director of Lands, requesting site rezoning. The investor's application contains the following documents:

- Application Letter for Change in Land Use, stating reasons for requested change
- Photocopy of C. of O.

The Director of Lands dispatches the application to the Land Use Allocation Committee (LUAC).

Step 2: LUAC Evaluates Application

The LUAC considers the investor's application at its monthly meeting. The LUAC makes a recommendation to the Director of Lands, pursuant to its statutory attributions.

Step 3: Director of Lands Approves Application

This is a *pro forma* step, whereby the Director of Lands endorses the LUAC's recommendations and makes his own recommendations to the Minister of the FCT.

Step 4: Minister of the FCT Conveys Approval

Upon reviewing the Director of Lands' recommendations, the Minister of the FCT endorses the LUAC's decision and conveys his conditional approval to the investor; pursuant to his attributions under the *1978 Land Use Act*

Step 5: Surveys Department Conduct Surveys and Collects Survey Fees

The investor submits his file to the Surveys Department, which conducts any necessary surveys and makes all necessary corrections to the FCDA's zoning maps. The investor pays any applicable survey fees.

Step 6: Investor Registers Changes in Land Use and Pays Registration Fees

The investor registers land use changes at the Registration Department and pays applicable registration fees.

Step 7: Investor Consults Planning Department and Pays Planning Fees

The investor consults the Planning Department regarding any applicable planning fees and pays all applicable fees.

Step 8: Investor Records Change in Land Use at Data Department and Pays Applicable Fees

The investor records the change in land use at the Data Department, and pays applicable re-zoning fees.

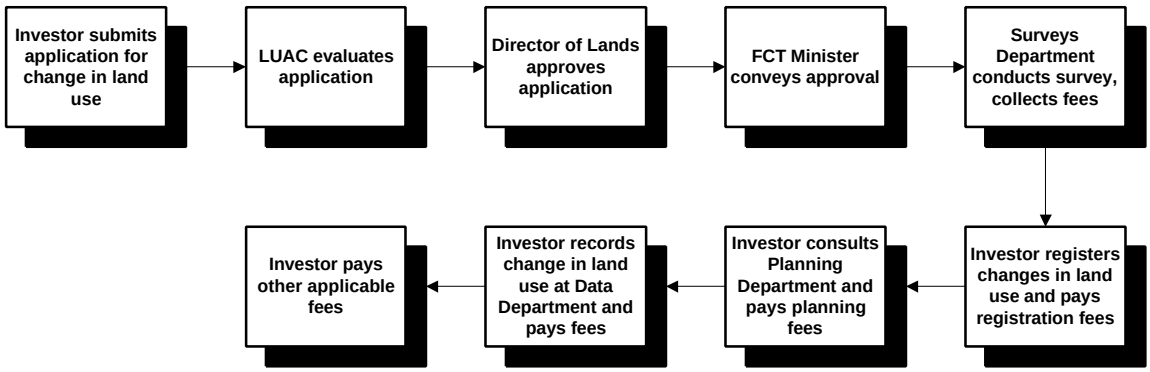
Step 9: Investor Pays Other Applicable Fees

The investor pays any other applicable fees to the Accounting Department the following fees typically apply:

- Lay-out Fee
- Premium
- Annual Ground Rent (Tax)
- Processing Fee

The consultants interviewed an Abuja-based solicitor specializing in property matters, who indicated that an investor would pay approximately N5,000 in fees to rezone his property.

Abuja, FCT Site Development Process: Re-zoning



2.3.5.2 Procedure for Site Development Permit

Step 1: Investor Draws up Design Plans

The investor hires professionals (including a registered architect and/or structural engineer) to complete building plans and an environmental impact assessment.

Step 2: Investor Files Plans with Relevant Authorities

The investor files various documents with FCDA's Lands Department Development Control Unit, the Federal Fire, Service and FEPA (if so required under the *FEPA Act*).[27] The submissions to the FCDA constitute a Site Development/Building Permit Application. As permits for Development, Subdivision, and Building Construction are not distinct in Nigeria, all requests may be processed at once, based on the submission of the following items:

- Simple Letter of Application for Plans Approval
- Plans, signed by a Registered Architect or Surveyor
- Photocopy of C of O

The investor must however obtain distinct approvals for all subsequent building works, additions, or changes to the original plans. The investor must also obtain distinct permits for road works (usually required –and obtained from the FCDA's Engineering Department) and re-zoning.[28]

Before evaluating the plans, Development Control refers them to the Lands and Surveys Department for preliminary processing.

[27] Discussed in chapter 1 section on Environment Mitigation
[28] Obtained from the Director of Lands: see above section, on re-zoning.

Step 3: Land Registry Confirms Property Ownership

Upon receiving a copy of the Applicant's C of O from Development Control, the Lands and Surveys Department first sends the application to the Land Registry for property ownership confirmation. The Land Registry forwards the application to the Surveys Unit to further processing.

Step 4: Surveyor Conducts Site Survey

The Lands Department assigns a surveyor to confirm plot dimensions. The surveyor completes a report, which the Lands Department submits to the Development Control Department. The Lands Department transfers the application file to FCDA's Land Planning Department for further evaluation.

Step 5: Planning Department Evaluates Plans

The Planning Department studies the investor's plans to ascertain their compliance with applicable planning documents regarding land use. Upon approving the plans, the Planning Department returns them to Development Control.

Step 6: Development Control Evaluates Plans and Issues "Letter of Plan Approval"

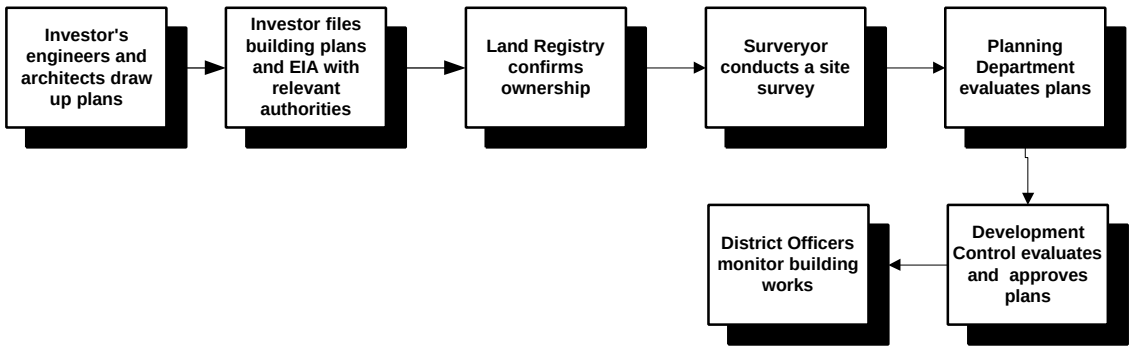
Once it has received clearances from the various other FCDA Departments concerned, Development Control's Engineering Unit studies the plans for structural compliance with building regulations. If the plans comply with building regulations, the Department issues a "Letter of Plan Approval" to the investor. The investor may begin construction.

Step 7: Development Control Unit Monitors Construction

Periodically, Development Control Unit district officers monitor construction progress. The Site Inspectors typically visit the site 1-2 times each week.

The investor does not need final clearance when construction is completed. If the investor has complied with the approved plans and applicable regulations, he has automatic authorization to occupy the premises.

Abuja FCT Site Development Process



2.3.5.3 Analysis

In terms of the re-zoning process in place, the FCT has much of room for improvement, for instance the following respects:

- First, the requirement that the investor return to the Planning Department, after he has filed, for the sole purpose of paying assessed fees.

- Second, the requirement that the investor see the Data Department during the course of his re-zoning petition, presumably to assist the Department in performing its own, internal FCDA data collection and monitoring functions, and that the investor is made to *pay for* this work.

- Third, the multiple payment-related visits required of the investors, successively by the Planning Department, the Data Department, and the Accounting Department, where all payments should be required at the same time.

- Fourth, the Minister's role in re-zoning, a dangerous exercise of power, completely outside of the Minister's true responsibilities, and a tremendous drag on process efficiency.

- Fifth, the absence of a no public Schedule of Fees regarding the re-zoning process. As a result, additional "facilitation" is a *sine qua non* for the process, which nevertheless requires approximately six (6) months.

- Finally, Abuja real estate solicitors' observation that all re-zoning has been suspended in Abuja, pursuant to a discretionary decision by the Minister of the FCT.

- On the other hand, the Abuja building plans approval process is practically a model of procedural design efficiency, with a few minor reservations.

- For instance, according to property law attorneys, the FCT's building regulations are not gazetted (although they are publicly available through the FCDA).

- Moreover, the site survey step appears unnecessary in the context of this process.

- Finally, according to the private sector, the site development process takes at least 4-6 months to complete – with the application of pressure at each step.

2.3.5.4 Recommendations

In terms of potential reforms to the Abuja re-zoning and site development processes, the consulting team makes the following recommendations:

- The FCT's Schedule Building Regulations and its Schedule of Fees for the re-zoning and site development processes should be made public and gazetted.

- The FCT should explicitly allow re-zoning petitions to be made, and review them on their merits on a case-by-case basis.

- Development Control should have no role in considering re-zoning requests.

- The principles of time-bound administrative decisions and resulting “deemed approvals” should be introduced in the context of the Abuja re-zoning and site development processes.

- The Planning Department should allow the investor to pay *all* fees at the time of submission of his plans.

- The Data Department should neither require a visit nor a fee from the investor in the course of executing its functions.

- The Minister’s role in granting re-zoning petitions should de delegated to the Director of Planning.

- The consulting team recommends that the government should replace the site survey step of then site development approval process with a verification of the FCDA’s survey plans, unless the land is not yet surveyed.

2.3.6 International Best Practice

Several lessons may be learnt from international practice with respect to simplification of the procedures and documentary requirements pertaining to development permit issuance.

International experience indicates that investors worldwide spend between four days and four years securing land development permits. Some countries have eliminated bottlenecks in this area by reengineering administrative procedures. All examples of international best practice include the following elements:

All necessary permits in the key stages of land development (allotment permit, building permit, etc.) are integrated into one step that requires no more than two days.

For site-related health clearances, the experience in countries such as Mexico indicate that the site approval procedure can be substantially simplified by exempting facilities engaged in certain activities, considered to be of "medium to low risk" from pre-opening occupancy permits and increasingly relying on post-establishment inspections.

Countries such as Mexico, Italy and Peru have managed to impose statutory limits on the granting of permits. These countries apply the “deemed approvals” principle: If the investor receives no official response within the statuary time limits, the receipt proving deposit of a request for a permit is considered sufficient legal justification for proceeding with development or construction works.

In Hong Kong, the investor submits building plans, waste-disposal plans and site development plans to the Construction Department. Plans and drawings that have not been rejected in writing within two days (the statutory maximum time limit) are considered

approved. To obtain an occupancy permit once the construction works are complete, the developer or contractor must simply certify compliance with all of the regulations of the Building Code as well as with all the provisions of his Title Deed. The Business Permits Information Center acts as a one-stop-shop for permitting, helping companies get permits from the various national departments' and agencies' concerns. Investors can even download applications directly from the Center's web site.

In Singapore, investors must gain Urban Development Authority approval prior to building or expanding a facility. Investors submitting site development and construction plans can expect a decision within two to four (2-4) days. The Council for Economic Development operates as a one-stop-shop, coordinating approvals for the investor.

In Ireland, the investor submits construction blueprints and site development plans to municipal authorities and, under a 1992 local government law, authorities typically grant all necessary zoning authorization and the construction permit, within one to four (4) days.

In Taiwan, the federal government must approve a development project before the local government may authorize plans and confer a construction permit. Investors typically have little trouble gaining approval within a month. Taiwan also has fairly liberal limited zoning rules.

International best practice also suggests implementing the following measures:

- Establishing a dedicated "desk" system, with a single individual responsible for every site's development-related administrative procedures (ex.: Ghana and Russia).
- Reducing the number of agencies involved in development approval and control. In fact, a joint commission involving all relevant agencies, conducting joint examination and with authority to confer permits is recommended.
- Reducing the number of required documents, forms, and plans.
- Establishing the calendar pf periodic, regular meetings of the joint development planning control commission

In Nigeria, investors must complete between six (6) and sixteen (16) site development approval steps, depending on the state. In some Latin American countries (such as Brazil, Mexico and Venezuela), on the other hand, investors complete only two or three steps.

2.4 Utilities Connections

Due to a lack of financial resources to fund public works, infrastructure is uneven, but generally severely lacking, throughout Nigeria. The Southeast, in particular, continues to complain about marginalization in terms of infrastructure provision. Abuja lies on the other end of the spectrum. Since the FCDA spearheads all public works, there is good interagency utility coordination. FCDA sources note that the government spends approximately N2 million to fully service each FCT plot sold.

Under the Nigerian Constitution, the federal government has exclusive jurisdiction over telecommunications and oil & gas. While federal and state governments theoretically share jurisdiction over power supply, currently, all public utilities are monopolistic federal agencies.

2.4.1 Electricity

In the World Bank's *Private Sector Assessment Report* on Nigeria, 37 percent of interviewed firms rated power, along with telecommunications, the "number one investment constraint." The consulting team also experienced frequent, though brief, power failures while traveling throughout Nigeria.

Electrical power distribution and commercialization are the exclusive purview of the Nigerian Electrical Power Agency ("NEPA"). Because the agency is poorly operated, the private sector notes that publicly provided electricity is largely "unavailable." NEPA's transformer and distribution networks, for instance, cannot support the investment community's power needs.

Most investors resort to stand-by generators for guaranteed power supply. According to one investor, every new site requires at least 2-4 generators. One Lagos-based firm pays approximately N300/m^2 per month to NEPA, and another N500/m^2 per month for its generators. Other companies resort to illegal power connections. One investor noted that NEPA usually supplies less than 2 hours of power per day; the company therefore arranged with local NEPA sub-station duty managers to obtain additional power. The company pays the duty managers approximately N25,000/month to supply its two-story office. The company also has one staff member who tracks power supply full time. Despite these efforts, the company claims it achieves only 30-40% power efficiency from NEPA. Another investor revealed that his company pays NEPA duty managers approximately N5/m^2/hour for 75% uninterrupted service.

Free Zone infrastructure is above average by Nigerian standards. Zone investors express only minor complaints about power. In the Calabar Zone, for instance, power supply is much more consistent within the Zone than elsewhere in the country due to direct power supply from a NEPA sub station. Because the Zone has its own transformer, it does not have to share power with other entities. According to Zone Management, power is available virtually 100% of the time. One company reinforced this claim, indicating that the zone is without power for perhaps as little as eight (8) hours each month. The Zone also has several stand-by generators that supply power when needed. Yet one company noted that the zone generator does not provide enough power for full capacity production when the national electrical supply fails. Moreover, generator power supply is adequate only because investors are few in number and loads low. A petrol station is currently under construction within the Zone. Finally, the construction of a dedicated 132Kv line substation improving the power supply to the Calabar Metropolitan Town is underway.

Notwithstanding the conditions in free zones, the Bureau of Public Enterprises (BPE)'s privatization program under the *Public Enterprises (Privatization and Commercialization) Act of 1999* should be extended to NEPA, in order to raise efficiency in the economy.

2.4.2 Telephone

According to the NIPC, there are just 700,000 landlines in Nigeria -- for a population of 120 million. NIPC notes that low tele-density is Nigeria's "Number 1 investment problem." Investors agree; one having pithily noted, "There are no lines." Indeed, as far as the private sector is concerned, telecommunications infrastructure is largely

"unavailable." There are bottlenecks in certain primary centers (NITEL's fiber optic cabling from Port Harcourt to Lagos has been damaged since 1999 and capacity is reduced by 50%, as NITEL has not been able to make any repairs).[29] Furthermore, as a result of frequent construction, telephone lines are often cut, limiting service. Experiencing these issues first hand, the consultants frequently struggled with the telephone lines, particularly when calling another state. The consultants found it almost impossible to call overseas from the states, and the connections were typically very poor.

Not surprisingly, illegal telephone connections are also prevalent. Needing 100 telephone lines, one company used personal contacts with NITEL field engineers to connect 25. Unfortunately, only 10 work at any given time. The company nonetheless pays a monthly running cost of N10,000/line to ensure 75% operation. Radio links are also deemed a *sine qua non*.

Again, free zone telephone infrastructure is generally above average by Nigerian standards. Zone investors express only minor complaints about telecommunications. The Calabar Zone, for instance, has dedicated telephone lines from NITEL. This makes it much easier for companies to obtain their own dedicated lines. Moreover, NITEL has an office in the Zone, to deal with any problems or complaints. Company representatives indicate that lines are occasionally faulty, but that this can be rectified easily because of NITEL's Zone office. There are also plans for telecommunications infrastructure upgrading. The phone system is fiber optic and the Zone intends to go to satellite. Indeed, a company has already been licensed to provide v-sat uplink and other telecommunications services within the Zone.

The Onne Oil & Gas Free Zone in Port Harcourt however offers a different picture, perhaps because there are over 60 companies using the telephone infrastructure. Dissatisfied with zone telecommunications services, one company in the Onne FZ wanted to install a tower to capacitate its own phone system. Zone Management refused, forcing the company to use the inadequate Zone system. Zone Management charges US$600 per line, in addition to the NITEL per line charges. The company also pays 40% of the amount NITEL charges the zone management. However, the company does not even really have its own line, but merely an extension from a main Zone line. The company indicated that the phones do not work about 35% of the time. When the company had two extensions – one solely for fax and one for phone – the phone only worked 10% of the time. In addition, the company representative said he has never managed to connect to the internet via Zone telecommunications lines. Although DMS has its own internet service, through Intel, which they allow Zone clients to use, the company does not trust Zone Management not to look through the company's email traffic.

There are signs of improvement. The National Communications Commission awarded GSM licenses in late January 2001. The GSM License auction process the Government decided to pursue, under which each Licensee was to pay $285 million for a license,

[29] "The GSM License was overpriced", *This Day*, Vol. 7, No. 2111, 02/01/01, p. 30

was very transparent. The four (4) GSM operators will have 2,000 cell sites, and their own transmission.[30]

However, the needs of the market are far from met. Again, the Bureau of Public Enterprises (BPE)'s privatization program under the *Public Enterprises (Privatization and Commercialization) Act of 1999* should be extended to NITEL, in order to raise efficiency in the economy.

2.4.3 Water and Waste Water

As with other utilities, publicly provided water distribution and wastewater treatment are to all intents and purposes "unavailable" in Nigeria, as far as the private sector is concerned. As one investor bluntly put it to the consultants: "Don't even bother asking."

Although the situation is generally poor nationwide, according to a report released by the Federal Office of Statistics (FOS) in the year 2000, the Southeast region has the worst potable water supply in the country.[31] Investors resort to boreholes, drilled by private companies, and for which (at least in Lagos State) no approvals are required.

It should be noted that Free Zone water and sewerage infrastructure is above average by Nigerian standards. The Calabar Zone has its own borehole and treatment facility. Waste is treated with UV rays and released on site. Investors nevertheless indicate that there is insufficient water supply in the Zone. One company located in the Zone noted that the zone provides insufficient water supply, but that this is likely due to a problem with the national water supply.

Again, it is recommended that the BPE's privatization program be extended to the water utility.

2.4.4 International Best Practice

International Best Practices suggest that the establishment of a forum for the various role players in development (municipalities, urban agencies, public utilities, etc.), endowed with the power to take decisions that are opposable to any of them, is a positive first step in improving utilities provision. Indeed, international experience emphasizes the benefit of a permanent forum for land development coordination. Permanent coordinating structures are especially useful in countries where the local government does not control public utilities and where local government development plans cannot enforce service delivery. Singapore has had much success with a coordinating structure under the National Economic Development Board (NEDB). Thailand has implemented a similar strategy under the National Industrial Development Authority (NIDA). The Philippines and the majority of the Asian tigers also coordinate urban planning in this manner.

[30] "The GSM License was overpriced", *This Day*, Vol. 7, No. 2111, 02/01/01, p. 30; "GSM: Can we afford $285m," *This Day*, Vol. 7, No. 2110, 01/31/01, p. 6

[31] FOS, in "Mirage of national conference," *The Comet*, 01/30/01, p. 26.

Chapter 3: Employing

This Chapter focuses on the various norms and procedures relating to securing investor and expatriate entry and work permits, labor registration, employee income tax registration and P.A.Y.E. obligations and finally labor norms, enforcement and dispute resolution mechanisms.

Overall, Employment is an area of concurrent State-Federal jurisdiction under Schedule II of the Nigerian Constitution. The consultants' analysis of the employing-related processes in Nigeria will paint a mixed picture of efficient and inefficient procedures, with a certain complexity and lack of transparency in some areas and flexibility and liberal regulation in others.

Nigeria must still seek to shed the remnants of past, militaristic, command-and control approaches to regulation, protectionist and "closed-nation" attitudes regarding foreign investment, and outdated social policies, in order to more fully embrace its own fundamentally liberal and progressive instincts. A series of specific recommendations will be offered throughout this chapter on a procedure-by-procedure basis, in order to achieve this goal.

3.1 Investor and Expatriate Entry

Nigeria Immigration Service
Ministry of Internal Affairs (MoIA)
Block E, Federal Secretariat
Area 1, Garki, Abuja FCT
Contact Persons: Lady Uzo C. Nwizu, Comptroller-General (CG); Deputy CG (DCG), Operations

Immigration is an area of exclusive federal jurisdiction. Although there are Immigration Offices in all of Nigeria's States, with a reasonable delegation of power, and Nigerian consulates abroad also have visa-granting powers, all investor and expatriate entry petitions are ultimately processed in Abuja.

3.1.1 Procedure

Step 1: Investor Requests Visa

The first step to the investor's or expatriate staff's entry in Nigeria is the Visa Application. This can be performed at any Nigerian consulate abroad, as well as (in cases of changes of status), at the MOIA offices in Nigeria. While most foreigners simply request a business/tourism visa and change their status once in Nigeria, other classes of visas may also be applied for abroad if desired.

Step 2: MoIA Issues Visa

Nigerian Consulates abroad are authorized to issue business/tourism, investor, and employment class visas. Business/Tourism and Investor visa classes are, according to Immigration, issued within 48 hours pursuant to a Presidential Decree setting clear-cut guidelines. Moreover, according to Immigration, consulates have been instructed to allow entry of expatriate personnel of foreign invested enterprises on the basis of their employer's Expatriate Quota position allotment Approval (EP), even before employment permit requests are completely processed. "Temporary Work Permits Visas" may be issued up to 3 months.

Step 3: Investor requests "EP"

While free to start earlier, the investor usually begins the full EP employment permit request process once in country. The process for requesting and obtaining EP "approvals" from NIPC was described above in chapter 1, as an integral part of the Business Registration and Permit Approval process, and will not be fully repeated in this section of the report.

Step 4: NIPC Issues EP

Except in EPZs, where all expatriate quotas are waived, the NIPC makes determinations (which should be more accurately referred to as recommendations) with respect to the approval of Expatriate Quota Positions ("EPs"). It may "approve" up to five (5) such EPs per foreign company, provided the company imports at least N1 million in capital and/or capital equipment into Nigeria for each such EP requested. Furthermore, NIPC Form 1 instructions state that businesses with N10-N20 million in capital receive two (2) automatic EPs for up to five (5) years, in addition to those determined by the NIPC, while businesses with N20 million or above, receive four (4) automatic EPs for up to five (5) years, in addition to those determined by the NIPC. EPs are granted by way of a NIPC Letter of Notification.

Step 5:Investor Requests "Permanent Until Review" ("PUR") Status

Upon receiving the Letter of Notification of the NIPC's decision with respect to an Application for a Business Permit and EPs, any foreign invested company wishing to avoid subsequent monthly "Quota Return" filing obligations may submit a Request for PUR Status to the NIPC's Department of Registration & Monitoring; including the following documents:

- Simple Request for PUR Status
- Payment of N1 million fee for each PUR Status
- Payment of the ordinary N 5,000 for each EP

Step 6: NIPC grants PUR status

If all documents and payments are in order, the NIPC will automatically approve PUR requests.

Step 7: Investor Requests Work/Resident Permit

Once the NIPC has granted its "approval" of EPs, it forwards a copy of its letter of Notification to Immigration which, under the *Immigration Act,* makes decisions with respect to the number of investor expatriates which may be admitted to the country and is thus responsible for the actual implementation of the EP Program. Immigration is also responsible for issuing related Work/Resident Permits. An Immigration-NIPC Agreement on EPs and Work Permits is what allows the NIPC any role at all in the process. At this stage, it is recommended that the investor personally contact Immigration to ensure proper follow-through of the opening of his file with the MOIA.

While independent requests by investors may be submitted directly to Immigration Offices in any of Nigeria's States (as well as consulates abroad), all new entrant files are eventually transferred to Headquarters in Abuja for final processing.

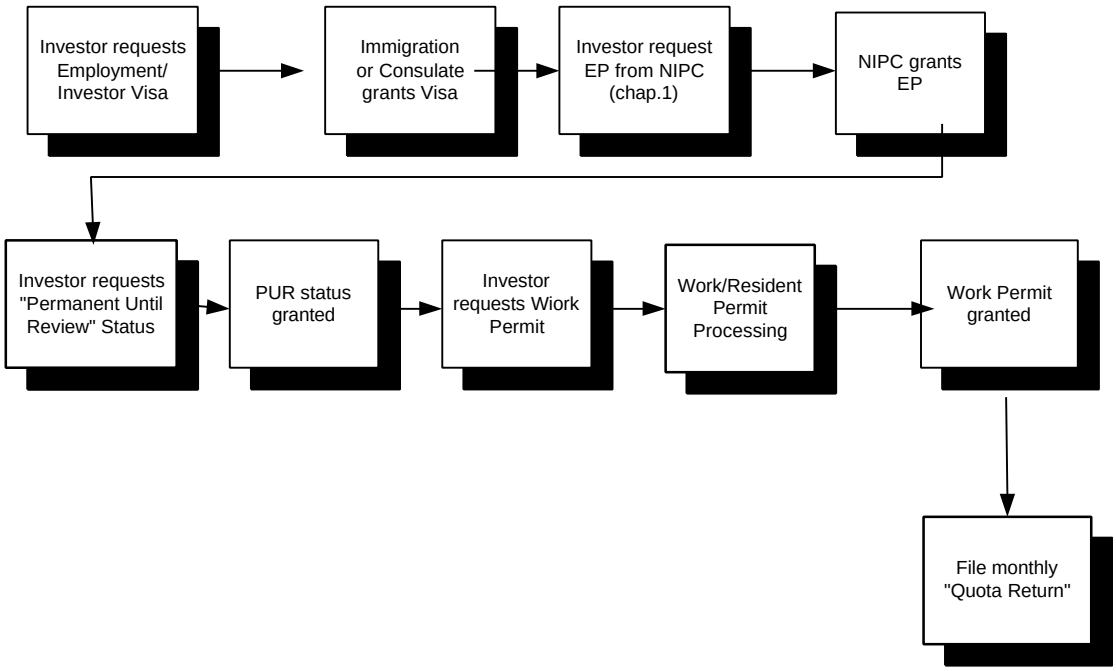
Step 8: Immigration grants Work Permit

When Immigration has completed its processing of the request, it issues a Work/Resident Permit to each expatriate for which the NIPC approved an EP.

Step 9: Investor Files Monthly "Quota Return"

All foreign invested companies must file monthly "Quota Returns" with respect to their expatriate personnel and submit them to the NIPC's Registration & Monitoring Department, unless they have also acquired PUR Status with respect to an EP.

Expatriate Work Permits Issuance and Compliance



3.1.2 International Practice

Throughout the world, investor friendly regulatory frameworks encourage work permit transparency. International experience indicates that a government is most transparent regarding this issue when it provide a list of professions for which it grants work permits, and a list for which it does not grant work permits. A list will both reduce investor uncertainty and limit any particular official's discretionary power.

A number of countries, such as Malaysia and Mauritius, have established work permit quota system: Each company has a specified number of work permits for foreign employees, to be used at company discretion. The quota system simplifies government decision-making.

Furthermore, Trinidad and Tobago consulates provide foreign employees with thirty-day work permits –indicated with a passport stamp. Mexican consulates offer special visas for technical staff, such as researchers and scientists. The Mexican Ministry of Foreign Affairs exempts these applications from processing in Mexico.

For a US work permit, investors visit US consulates abroad or having filed and processed in advance of travel the port of entry Immigration service. The simplified procedure requires only one application and, if approved, results in a passport stamp. This process results in a combined for residence permits, work permits, and multiple entry visa. Where appropriate, the US Social Security Office will later issue a social security card (Green card) via the postal system. The social security card replaces the work visa.

3.1.3 Analysis

Nigeria's Immigration services and schemes are moving in the direction of international best practice. According to the CG of Immigration, Immigration is attempting, since transition to the civilian administration, to relax its requirements, expedite processing, and facilitate investment as "partners in progress." Officers in charge of State Commands have been encouraged to conduct investor workshops to uncover any problems as well as elucidate the actual effects and output of current immigration policies. While the law is viewed by Immigration as liberal, the CG has expressed a willingness to make changes in the *Immigration Act* if necessary in order to resolve any uncompetitive practices.

Still, the consultants themselves experienced first-hand the difficulty of obtaining business visas at the Nigerian Consulate in Washington DC, where issuance of one team member's visa took a full week. Such stories remain commonplace. Indeed it would seem that practice has not yet caught up with the new schemes.

According to the CG, one problem may be that "the real professionals" (e.g. staff from Immigration) are not present in foreign consulates.

Furthermore, inadequate information on visa types was also viewed by the CG as an area of potential difficulty for foreign businesspeople and investors. It should however be noted that Immigration has commissioned the development of "Immigration Information Bulletins" and Pamphlets and intends to disseminate them far and wide, as soon as they are finalized.

More serious problems may also exist. It is unclear why Nigeria, if it is seeking foreign investment, refuses liberalized non-reciprocal Port-of-entry visa issuance. Indeed, Immigration's response was that "Nigeria is not a tourist destination" and that Nigeria will thus continue to apply port-of-entry visa issuance restrictions to nationals of other countries so long as they are applied to Nigerians in those nationals' own countries. In a competitive world in search of foreign investment, such attitudes appear increasingly anachronistic. As the NESG pointed out in a late January conference in Lagos entitled "Nigeria: Barriers to Attracting No Oil Foreign Direct Investment", free movement of people is critical to the FDI equation.

The largest problems are however relate to the implementation expatriate work permit issuance. Investors complain that the current system lacks transparency and makes short-term planning difficult.

The Chairman of one investor interviewed by the consultants has been without a residency permit for two years – trying to get it. He said that "Immigration is a business center" –requiring unofficial payments. Moreover, he indicated that the investment facilitation authority with which he is dealing does not have a good relationship with the state or federal immigration authorities.

Another investor interviewed by the consultants noted that "using a legal approach", obtaining an EP might take approximately six (6) months, but that "using a business approach," that timeframe could be reduced to just 2-3 months. The "business approach" would require additional "unofficial" payments of approximately N100,000 per EP plus about $2,000 for PUR status (all costs factored in, including staff time, travel and lodging, and facilitation fees).

It is also unclear how many EPs a company is entitled to. One investor interviewed believed that large companies might be able to obtain as many as ten (10), while most believed that the maximum was of five (5). Lack of transparency may be partly to blame. Information dissemination on the EP program and procedures are inadequate, according to the CG of Immigration, and Immigration views this as a failing of the NIPC to fulfill one of its statutory duties. Immigration intends to staff an Immigration Desk at the NIPC in the near future, to enable investors to process their requests for Work Permits there as well as their change-of-status requests there.

3.1.4 Recommendations

The steps for obtaining Visas, EPs, PUR status and Work Permits remain distinct, where they should not be, should Nigeria wish to achieve international best practice. A single-step process should be put in place for issuance of these various documents, which should in any event be collapsed. In fact registration for the NSITF, the National Training Fund and Income Tax (see below) could also occur through the same process.

However, the entire EP Program might just as well, in the consultants' estimation, be eliminated –as it has been in theory in the EPZ context (An Onne-located company indicated that only once did Immigration officials come to its office unannounced. The company called the Onne Zone Management, which told Immigration that they are not allowed in the Zone because it is not Nigerian territory). The EP program is based on a false premise: That foreign invested companies will hire expatriates rather than nationals

to fill all management positions unless checked by quotas. In fact, there are many reasons why foreign investors would do just the opposite, not the least of which is Nigeria's extremely qualified, English-speaking and affordable human resource base, with country-specific experience and knowledge. The quota system sends out a protectionist message and may leave the door open to even more unsavory protectionist instincts. In one recent case reported to the consultants by an investor, Rivers State adopted a law (later determined to be *ultra vires*), forbidding the hiring of anyone but nationals.

3.2 Labor Registration

Nigeria has no social security system. Only the civil service has mandatory pension funds, although industry has implemented some private funds for its employees. Nevertheless, labor must be registered with at least three (3) separate entities in Nigeria:

- The Nigerian Social Insurance Trust Fund (NSITF);
- The Nigerian Industrial Training Fund (ITF); and
- The State's Board of Inland Revenue (BIR).

Given the complexity of the latter procedure, the following section of the chapter will deal exclusively with the first two of these processes.

3.2.1 Registration of Labor and Compliance with the NSITF

Each employee, where a company has more than five (5) members of staff, must be registered by the investor with the NSITF. Doing so requires compliance with the following steps:

Step 1: Application

The investor files a single form with respect to all of his employees. He must also pay nominal registration costs at that time.

Step 2: Collection of Proof of Registration

Several weeks later, the investor must return to the NSITF offices to collect his proof of registration. He will be assigned a Registration Number at that time.

Step 3: File Monthly Returns

To remain in compliance with labor law, the investor must file a monthly return, indicating the number of his employees, as well as their salary.

3.2.2 Registration of Labor and Compliance with the Industrial Training Fund

The investor must accomplish the following formalities with respect to the Industrial Training Fund:

Step 1: Register with the Local Offices

The investor must register all labor with the local offices of the Industrial Training Fund.

Step 2: Make Periodic Payments

The investor must contribute 1.5% of each employee's paycheck to the Fund.

Labor Registration and Compliance with NSITF and the ITF

3.2.3 International Best Practice

Experience in all regions of the world shows that long-term economic growth depends in large measure on the availability of qualified and professional labor. In fact, modern capital movements favor regions with abundant qualified labor. But while the principal source of labor in a country is traditionally its youth, young people often lack the requisite professional experience to find gainful employment. Firms often hesitate to employ young people owing to the cost of training them. For this reason, many industrialized countries, as well as certain developing countries, have developed fiscal and other incentives to encourage companies to hire and train young workers.

In Austria national and regional programs offer loans to young entrepreneurs; other programs subsidize the employment of young workers. The Belgian government provides training subsidies, tax deductions, and contributions to social security accounts to promote the hiring of young workers and of the unemployed. Denmark provides counseling and subsidies to young entrepreneurs. In France, people registered as unemployed who succeed in creating a business receive subsidies, exoneration from social benefits contributions, and tax reductions. A special program (*Programme d'Insertion Professionelle des Jeunes et Demandeurs d'Emploi*) allows employers to obtain tax reimbursements and credits, exoneration from certain forms of social security, and also training subsidies for hiring youth and officially unemployed. Greece also provides subsidies and fiscal incentives, while Ireland offers training through a National Employment and Training Agency. Luxemburg allows deductions on salary taxes. In the U.K. the Training and Enterprise Councils help entrepreneurs by paying expenses for training. Holland, Sweden, Japan, and the U.S. all have similar programs of fiscal and other incentives for employing youth, the chronically or temporarily unemployed, and special categories of people facing difficulties in the marketplace because of race, age, ethnicity, or other factors.

International practice demonstrates that any and all systems of incentives for employment and for training youth must be easily accessible, based on clear, simple procedures, and should even be automatic in the case of tax breaks. Cumbersome and ambiguous rules and procedures leave incentive systems ineffective and even worthless.

3.2.4 Analysis

There are no significant complications with respect to the NSITF registration process. Costs are nominal and no non-statutory costs are required of the investor. However the processing time for the Application, which takes an average 3-4 weeks, seems unnecessarily slow.

If the investor neglects to fulfill any of the ITF's registration obligations, the Fund's staff will come to the company and require registration as well as payments on-site. It is worth noting that this is practically the only example the consultants found in Nigeria of a Government agency making an effort to go out and meet the investor rather than requiring the investor to come to it –even where the requirement results in financial transfers to the agency. Furthermore, the combination of ITF periodic payments, NSITF monthly returns, BIR renewals and NIPC Quota returns come together to create an unnecessarily duplicative employment-related reporting environment.

3.2.5 Recommendations

In order to facilitate the overall flow of the process, the requirement of an investor return trip to the NSITF Office for collection of the Proof of Registration should be replaced by its delivery to the investor.

Of greater importance, however, one must question the relative competitiveness of maintaining such a scheme at all in the context of Global Competition for Investment. The Government should consider abolishing pay-in into the ITF. Furthermore, a single EP/PUR/Employment Permit/Visa/NSITF/ITF petition and registration process should be designed. A Harmonized NSITF/ITF/BIR/NIPC employment reporting system should also be envisaged.

3.3 Employee Income Tax Registration

As part of the employing process, companies must register their employees under the income tax system. Each Nigerian state has an Inland Revenue Service, which collects employee income taxes from companies. Companies also pay the monthly income tax deductions to the state Board of Inland Revenue, and file annually with the Board; however, these two tax processes fall under the operating process group and are covered in Chapter V. The consulting team explored the income tax registration process in Rivers State. The team also interviewed the Board of Inland Revenue in Kaduna and Plateau States.

3.3.1 Procedure

Step 1: Investor Consults with Board of Inland Revenue (BIR) Staff

When a new company locates in Nigeria, it must proactively visit the state Board of Inland Revenue office, usually located in the state capital, to register for employee income tax payments. If the company does not visit the office, BIR staff approach the company to request registration. BIR staff frequently scout out new companies; therefore, the Board is typically aware of new companies within 3to6 months of their arrival.

During the consultation with the BIR, the following occurs:

- Company presents letter requesting tax authority registration
- Staff advise company on correct taxation process
- Staff give company correct number of employee income tax forms
- Staff give company letter of appointment and tax reporting serial number

The company first submits a tax registration request. The request is merely a letter, on company letterhead, asking for employee income tax registration. During the consultation with any of the Board staff members, the Board advises the investor about the relevant taxation system for his company. Companies with 10 or more employees register under the P.A.Y.E. (Pay As You Earn) system.[32] The Board refers companies with fewer than 10 employees to Direct Assessment. Under this system, the employer makes advance tax payments on behalf of his employees. He subsequently deducts that amount from employees' monthly salaries.

During the consultation, the Board of Inland Revenue provides the investor with an income tax form for each employee. The Board also gives the company a *letter of appointment* authorizing the company to deduct income tax from each employee's paycheck. The letter of appointment provides the investor with a unique tax reporting serial number.

Step 2: Employees Complete Income Tax Forms

After visiting the BIR, the investor gives each of his employees a tax registration form. Employees return completed forms to the designated company representative, typically the accounting staff.

[32] If the new company is a branch office with headquarters in another state, there is no minimum number of employees required for P.A.Y.E. registration.

Step 3: Company returns Employee Registration Forms to Board of Inland Revenue

The company returns the completed employee tax registration forms to the Director of Assessment at the BIR. The Board will not collect forms from individual company staff members.

Step 4: Board Creates Notice of Free Pay Allowance for each employee

Based on the information that each employee provides concerning the number of dependents and other allowable deductions, the BIR determines individual income tax allowances. With this information, the Board prepares a tax deduction card for each employee. This card is the Notice of Free Pay Allowance. The BIR completes these cards 1-2 weeks after obtaining the employee registration forms from the company representative. Expatriate staff are only entitled to Personal Allowance.

Step 5: Board Dispatches Notice of Free Pay Allowance

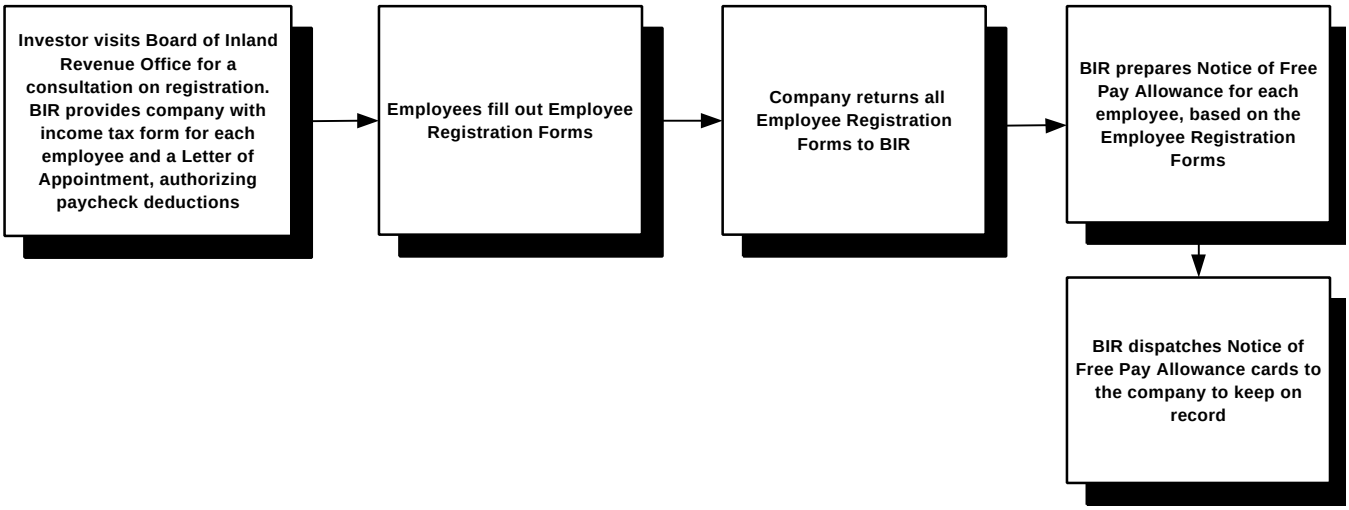
The BIR dispatches Notice of Free Pay Allowance cards to the company. The company files these cards in the accounting department. The company notifies each employee about his specific free pay allowance[33]. This completes the income tax registration process for a company.

Step 6: Investor Registers Renewal and Notifies BIR of Personnel Changes

After completing the annual return process (see chapter 6), the BIR sends each company the necessary employee cards for the next year. If there is a change in the number of employees or employee turnover, the company must notify the BIR, which will respond with the correct number of forms.

[33] Expatriate staff are only entitled to Personal Allowance. An expatriate employee is not entitled to tax allowances on dependants, housing, ect.

Income Tax Registration Process



3.3.2 Analysis

The investor's interaction with the BIR appears relatively sensible and efficient.[34] There are no *hidden* steps before visiting the BIR since the investor is not required to bring any documentation for the initial consultation. Any of the BIR employees are apparently qualified to speak with investors and give them the proper income tax forms for each employee and a letter of appointment; theoretically, this means that there is ample staff to provide assistance if one of the Board members is not available. In the Rivers State, the Board claims a mere 5% registration and filing error rate, indicating that the process is either efficient, and/or that staff assistance is effective.

There are, however, a number of issues that render the process less than perfect. For instance, in some states, it might be more difficult for an investor to get assistance than it appears. The Rivers State Board of Inland Revenue has five (5) phones for 37 staff, and these only operate internally. The agency has no external telephone lines, and therefore no fax machines or Internet connections. Investors cannot call ahead to make appointments; nor can they call in with questions. Investors must visit the staff during operating hours, and wait their turn to speak with an available staff member. This can result in substantial inefficiency for the investor. The Rivers State Board office is poorly equipped in other respects as well. The offices lack many office basics, such as filing cabinets and back-up electrical systems. The team visited the office on two occasions – one visit lasted nearly two hours. On both occasions, the office was without light; this was not a general citywide power outage because other buildings had power during this time.

There also appears to be an inconsistency in the rules for P.A.Y.E. filing in some states. According to a former Chairman of the Board of Inland Revenue for Lagos State, the ten-employee minimum for P.A.Y.E. system registration is an old requirement. He noted

[34] Income tax registration is covered in this chapter; income tax payment and annual filing are covered in Chapter 5.

that currently there is no current minimum employee number for the system. The consulting team is unsure why this minimum requirement endures in Rivers State.

Except in Kaduna, there is also no guide to explain the income tax registration process, payment, and filing system to investors. Apparently, the Rivers State Board previously provided a guide; however, budgetary constraints no longer allow it to. Moreover, all requisite forms are available only at the agency office, from a staff member.

Moreover, some companies in the Calabar Export Processing Zone indicated that their Nigerian employees do not pay income tax. The team is not sure whether this means that the company itself does not register and pay on behalf of its employees (leaving the individuals to file themselves in order to be tax compliant) or that the employees truly do not pay income taxes if they work in the Zone. The consulting team is not aware of any law that exempts zone-employed Nigerian citizens from paying income tax. In fact, one of the companies noted that when tax authorities stop its employees outside the zone, the company or the individual pays a small fee and the matter is dropped. Another company did indicate that Zone Management notifies the BIR when a new company comes, and the BIR sends employee tax registration forms directly to that company office in the zone. There is no tax representative in the Calabar Export Processing Zone. There would thus appear to be considerable confusion over this issue.

The Kaduna Board of Inland Revenue was, at first, the only organ of the state government hesitant to speak with visitors —potential investors— without a formal letter of introduction addressed to the BIR Chairman. After the consultants fully explained their mission, and assured the BIR that they only sought routine and publicly available information, BIR personnel were wholly forthcoming. But the attitude of welcoming and encouraging investors was less evident here than at other Kaduna State institutions. It is likely that the BIR sees itself as downstream in the business process and not engaged in the business registration and authorizations. In this it is correct: save for the Tax Clearance Certificate from the Inland Revenue Service in Abuja, the fiscal system is uninvolved in the sundry authorizations for new business activity.

It remains unclear, however, why the Kaduna State Board of Inland Revenue failed to mention the Ministry of Commerce and Industry when asked how they identified a new businessperson: the Ministry indicated that it relays new business information to the Board of Inland Revenue as one step in the business premises permit application process[35]. The Board said that an investor is expected to write to them informing them of its new operations, but that their own inspectors would identify any new business in due course. However, in granting the business permit, the Ministry of Commerce and Industry sends information to the Board of Inland Revenue, which creates a form on computer, registers the business name for its own archives, and returns the printed form to the MCI. Some or duplication as regards the investor's obligation thus subsists.

3.3.3 Recommendations

While some international jurisdictions place the burden of employee tax registration on the employee, P.A.Y.E. registration by companies is neither uncommon nor necessarily an unduly cumbersome investment requirement. Furthermore, nothing in Nigeria's application of P.A.Y.E. is *a priori* inefficient in its design.

[35] See Chapter 1: Business Premises Permit Process.

The Rivers State Board of Inland Revenue offices should however be equipped with a better communications system. The consulting team recognizes the limits of the Nigerian telecommunications system. Nonetheless, it is not unfeasible for the offices to have at least several outside telephone lines. If the office has external telephone lines, investors may be able to call ahead of time to schedule appointments and to ask questions, rather than visiting the office in person. The Rivers State Board of Inland Revenue should also be equipped in other respects. Again, the consulting team recognizes the Nigerian State governments' financial constraints, but urges that government offices be equipped with a consistent electricity source at the very least. For instance, government offices should have generators as a back-up electrical source. The consulting team also recommends that tax authority offices be equipped with filing cabinets so that paper files can be neatly and efficiently organized. Not only does organization improve investor's perception of the process and the agency, organization can also increase agency efficiency.

Given the inconsistency in the minimum level of employees required for P.A.Y.E. registration, the consulting team recommends a federal policy setting uniform limits nationwide. If, indeed, there are no longer limits, the team suggests that federal tax authorities disseminate information on the changes in the P.A.Y.E. system requirements to all state BIRs.

The consulting team recommends that each state Board of Inland Revenue publish a tax registration guide for that state. The guide should cover all processes that an investor must complete to comply with state tax registration requirements. Moreover, the guide should serve both investors and tax authority personnel. Since Rivers State Board of Inland Revenue personnel misquoted federal tax policy, the consulting team feels that both staff and investors need clarification on tax policies and regulations. The guide should include all relevant forms, in detachable, usable format.
The consulting team also recommends that the federal government establish and make known a policy regarding employee income tax requirements for Nigerians working in the country's free zones. Currently, there appears to be considerable confusion over the requirements and exemptions. Finally, customer-service training is recommended for BIR staff nationwide.

3.4 Labor Norms, Enforcement and Dispute Resolution

Federal Ministry of Labor and Productivity
Department of Labor
Abuja, FCT

There are few real labor norms in Nigeria, except for the minimum wage and sector-specific norms in the oil & gas industry. Statutory minimum wage is currently of N1,250-5,500/month.[36] Furthermore, section 17 of the *Labour Act* would appear to obligate employers to pay all workers full wages merely for presenting themselves to work.

Most labor norms in Nigeria are set out in collective bargaining agreements. Striking and lock-outs are regulated by Agreement rather than by Law. Collective Bargaining in Nigeria is not subject to any particular Government-supervised framework and is left to the Unions and Management to sort out on their own. It should be noted that professional and managerial staff is excluded from labor norms established through collective bargaining, as well as from the benefits of the *Labour Act,* the *Workman's Compensation Act*, and the *Trade Disputes Act*. Under the Law, all of their rights must be set forth in their individual work contracts, in which freedom of contract is absolute.

There are no labor and occupational safety inspections for the enforcement of labor norms. Indeed, there is no specialized body dedicated to supervising and enforcing labor and occupational safety norms, although a quasi-functional Factories Inspectorate at the Ministry of Labor and Productivity receives complaints and an *ad hoc* roving regulatory body may be established under the *Workman's Compensation Act* to react to them.

The termination environment is fairly liberal. Contrary to the case of "termination for cause", no particular conditions are required for a "simple termination" except for compliance with certain notification timeframes and severance pay requirements.

From a procedural standpoint, he principal issue of interest to this report is however the dispute resolution procedure, detailed below.

3.4.1 Dispute Resolution Procedure

Specialized Nigerian Labor dispute resolution mechanisms are mostly used at the behest of the unionized employee, in the context of collective disputes. Under the *Trade Disputes Act*, in the event of a labor dispute involving all issues concerning collective agreement interpretation, conditions of service, redundancy, termination, or terminal benefits, investors are required to resolve the matter before a specialized system. The following procedure must be followed in resolving a labor dispute through this system.

Step 1: Referral of the dispute to the Minister of Labor

Upon failing to amicably resolute a dispute, the employee or employer may refer the matter to the Ministry of Labor.

[36] "Obasanjo's and Chikelu's revolution," *The Guardian*, 02/03/01, p. 7

Step 2: Choice of a Mediator

The parties to mediation of a labor dispute referred to the Ministry of Labor must then choose a mediator or, if they cannot agree on one request the appointment of a Conciliator by the Minister of Labor, within seven (7) days of the dispute arising.

Step 3: Referral of the dispute to an Industrial Arbitration Panel ("IAP")

All industrial, agricultural, mining, and services sectors disputes, in the event of the failure of the Mediator to resolve the dispute within 14 days, may be referred to an IAP.

Step 4: Referral of the dispute to an Industrial Court

In the event of the failure of the IAP to resolve the dispute within 42 days, the matter may be referred to an Industrial Court.

Step 5: Appeal to the Court of Appeal

If either party is unsatisfied with the decision of the Industrial Court, they may refer to the Court of Appeal.

Step 6: Appeal to the Supreme Court

If either party is unsatisfied with the decision of the Court of Appeal, the matter may be referred to the Supreme Court.

3.4.2 International Practice

Globalization and market forces have exposed businesses to hard competition. These forces erode the protected markets to which companies were accustomed, and they make corporate flexibility a necessary condition for adaptation to rapid market change. At the international level, businesses have undergone profound transformations in the way they organize productivity, acquire skills, perform and compensate labor. Given the concern for flexibility and new forms of productivity, the process of laying off and of firing unproductive employees should be relatively easy and straightforward. In order to encourage businesses to hire workers under long-term contracts with no fixed date of termination.

International experience shows that growth of the labor market is related to flexible procedures for hiring and firing employees. In Germany, for example, a worker may be let go for reasonable cause. A firing may be the consequence of incompetence, repetitive disciplinary measures, or even operational business interests. A credible system for resolving employment and labor disputes greatly enhances the capacity of employers to discipline, lay off, or even to fire, unproductive workers. This facility is an important factor in boosting the productivity and international competitiveness of firms.

Workers' organizations and the traditional methods of collective bargaining are more and more phenomena of the past, recognized as incapable of dealing with a diversity of legitimate causes and of new forms of employee/employer relations. New methods of collaboration with workers are better adapted to contemporary circumstances. The ILO itself has stated that the limitations that globalization imposes on Keynesian

interventions have deprived the unions and their allies of a viable macroeconomic program."

In the era of globalization, investment decisions have become increasingly sensitive to such issues as salaries, employment regulations, and the overall productive capacity of labor in a specific region. According to the ILO, mobility of capital has introduced three broad factors into professional relations: (i) reduction in the ability of governments to intervene in labor relations; (ii) increasing autonomy of corporations; and (iii) growing international competition for investment based in part on the cost of labor. A national objective of attracting foreign direct investment can therefore bring about significant changes in legislation governing unions as well as in the overall climate of labor relations. Today, one can observe a clear trend towards deregulation and individualization in labor relations. It is important that new labor codes be adapted to present realities.

In the industrialized countries, two broad options are emerging: a "voluntarist" model, born in England, and a European model. The voluntarist model is characterized by decentralized negotiation and minimal government intervention. The voluntarist model allows the involved parties to define themselves the nature of their labor relations, while government legislation retains the function of defining the terms of collective bargaining. In this model, bargaining takes place at the level of the individual enterprise and union. Decentralized collective bargaining, long the dominant model in the U.S. and the U.K., has recently become more and more predominant in countries such as Australia, Canada, and New Zealand.

In the European model, collective bargaining is coordinated in a centralized, off-enterprise location, and it attempts to ensure both economic protection of the worker and the promotion of social cohesion. The role of government is considerably greater than in the voluntarist model.

A third model (*shunto* or national coordination), inspired by Japanese labor relations practice, has recently emerged as well. In this model collective bargaining is decentralized but less confrontational than in the voluntarist type, and it is the object of a national coordination program that may include the State, though in a manner less formal than under the European system.

Judging by indicators of unemployment in the U.S. and the U.K, deregulation along "voluntarist" lines appears to have produced strong economic results and the voluntarist model seems best adapted to current conditions. But strong results can also be provided by a well-understood and broadly accepted regulatory environment, based on wide social acceptance of the labor relations framework. In the past, this was the case in Sweden and Japan; it is today the case today in Ireland and Holland, where centralized systems are producing enviable economic indicators. In the end, to choose the best model, a country must determine the capacity of its society to come to agreement within the context of its own particular context of employment and salary discrepancies.

In Western Europe, where unemployment has risen regularly for a number of years, the trend towards decentralization is on the rise, whereas bargaining at the national and sector levels is losing ground. This trend has shifted the power base away from the old centralized professional federations and towards regional and sectoral labor bodies. In Sweden, for example, centralized salary agreements are losing ground, while sector

negotiation remains very strong. In Germany, the bastion of the European model, employers in the chemical and metallurgical industries are also increasingly proceeding forth with sector-based negotiations. The changes the German Labor Relations model has undergone in recent years have also opened a large space for bargaining at the company level to resolve issues affecting production.

In developing countries, company-based negotiation is gaining favor, especially in Argentina, Brazil, Chile, and Mexico. The more developed countries of central and Eastern Europe are also trending in this direction, as demonstrated by Hungary in particular. In South Asia where no strong legalistic tradition of collective negotiation, ever took told, according to the ILO, "the mechanisms for social dialogue are not fully in place" and 40% to 65% urban jobs between 1990 and 1994, were created on the informal sector. Similarly, according to the ILO, "in Latin America over 80% of the 15.7 million jobs created between 1990 and 1994 were in the informal sector." As far as Africa is concerned, studies suggest that the informal sector employ some 61% of urban labor and generated 93% of new jobs during the 1990s. Although the informal sector does not engage in any meaningful form of labor negotiations, these figures nevertheless intuitively tend to support the thesis that European models of regulation of the labor market in developing countries will prove ineffective, perhaps explaining the rise of the "voluntarist" model in those developing countries which have had some success in implementing a labor negotiations framework.

3.4.3 Analysis

Nigeria's labor Norms framework is generally consistent with international best practice. However, some local state officials made it clear that ethical tradition (in Kaduna, for instance) requires sourcing junior staff from the locale of the company and other staff to as high a degree as possible from the locale. The officials also indicated that they visit companies to make sure the tradition is respected. Little could make foreign investors more ill at ease than strong enforcement of unwritten and shifting rules.

Moreover, there is some disagreement among investors as to the degree to which labor legislation and dispute resolution procedures contained in the *Trade Disputes Act (1976)* and the *Labour Act*, constrain the hiring and firing of local workers.

Labor unrest is, on the other hand, a contingency for which the Nigerian State and legislative framework is well prepared. Organized Unions are a real force in Nigeria, where there are nine (9) registered industry-based unions and a central labor organization called the Nigerian Labor Congress, which is affiliated to the ILO. The majority of formal sector workers are unionized. All Union chapters are organized and funded by workers under the *Trade Union Act*. The Unions' counterpart is the Nigerian Employers' Consultative Association ("NECA"). Judges are thus specialized, industrious, and expeditious. The treatment of management and workers is fair and equitable. Delays are less severe than in the Common Law Courts because there are fewer cases. Moreover, one investor interviewed by the consultants noted that his company favored using the labor conciliation proceedings and initiating them in the case of collective disputes, as they tend to strengthen one's position in a Common Law Court later on.

Still, few matters wind up before the IAP. Employers generally tend to go directly to the Common Law Courts. Indeed, enforcement of Labor Court decisions is not completely adequate, as strikes are often used as a manner of overcoming unpopular and/or

contested decisions. Professional and managerial staff may not initiate any suits against their employers under this system, although they may sue under the Courts of Common Law. Furthermore, the IAP and Industrial Court are *ad hoc* rather than permanent, geographically-attached bodies, and are thus somewhat difficult to set into motion.

3.4.4 Recommendations

While it already presents some definite strengths, introduction of the following measures may improve Nigeria's labor relations framework further still:

- First, the Government should consider publishing a detailed Guide to Employing Procedures (including costs, screening criteria, timeframe, contact information, etc.), labor reporting requirements, and labor dispute resolution.

- Second, a progressive disciplinary system should be made available to employers through the Labor Code, so as to provide for a graduated response to employee discipline- rather than forcing Management to proceed to firings and Unions to strike.

- Third, a proper labor norms inspections mechanism should be instituted, so as to provide a better environment for work safety, health, and legality. Such a mechanism might, if properly utilized, reduce the incidence of labor disputes going to Court quickly resolving problems as they emerge.

A permanent, geographically based Labor Court should be instituted to resolute disputes rapidly when they arise.

It should be opened to all forms of dispute, from all categories of employees, so as to alleviate the burden of cases on the Common Law Court system. Its judges should be well versed in both labor and general contracts and torts law.

Chapter 4: Import and Export

This chapter focuses on import/export procedures for companies located in a couple of the country's free zones, and for companies located outside of the zones. In this chapter, the consulting team also discusses Nigeria's export incentive programs: the Manufacture-in-Bond Scheme and the Duty Drawback Scheme.

Overall, Nigerian customs and port procedures appear fairly rational. Many international practices have been at least partially adopted in practice, including Kyoto and ASYCUDA norms, SGDs, and selective verification.

A number of inefficient, uncompetitive, and antiquated practices nevertheless subsist, including:

- A lack of information and transparency, resulting in extra-legal behavior; and
- Poor, equipment, facilities, and official pay.

As a result, counting wait-time for berths, ports and customs clearance timelines of well over a month remain commonplace, in spite of official comments to the contrary.

The situation in Free Zones, while somewhat better, is nevertheless still hampered by dealings with Port Customs and NPPLC officials, with resulting average clearance times of 1-2 weeks.

Nigeria's export incentives programs, for their part, are simple and straightforward in theory. Unfortunately, they apply only to the manufacturing sector, status takes years to acquire due to poor implementation, and information on the programs is poorly disseminated.

A detailed discussion and analysis of Nigeria's Free Zone and Non-Free Zone procedures, as well as of its export incentives acquisition procedures, follows, accompanied by a discussion of international best practice cases and the consultants' summary process-reengineering recommendations.

4.1 Importation and Exportation Procedures

Nigeria Customs Services (NCS)
Abuja
Mr. Ogungbemile, DCG (Customs)
Mr. Ogunbemi, Comptroller (Import & Export)

The Nigerian Federal Government, through the Nigeria Customs Services (NCS) and the Nigerian Ports Plc (NPPLC), has exclusive jurisdiction over customs services and port operations. Nigerian Customs regulations and tariffs are set forth in the *Customs, Excise Tariff (Consolidation) Decree No. 4* of 1995.

Nigerian law provides importers the option to clear goods on their own; however, since the process is so complex, most importers employ registered and licensed clearing and forwarding agents. Clearing agents must obtain a CNCS Customs Agents License Certificate, a NPPLC License Certificate for each port of entry where they intend to operate (including airports), and an ASYCUDA Registration Certificate, each of which is valid for one (1) year.

The consulting team investigated both free zone and non-free zone importation and exportation procedures. For non-free zone procedures, the team spoke with federal customs officials in Abuja, and customs officials and clearing agents on the ground at several ports –to determine if there are any differences between customs procedures regulations and customs procedures implementation. Federal officials outlined procedural requirements similar to that of actual port customs officials; nonetheless, there are some significant differences. The consultants address these disparities in the analysis section below.

In Rivers State, the consulting team spoke with the Nigeria Ports Plc (NPPLC), Onne Oil & Gas Free Zone managers, and a private customs service company. In Cross Rivers State, the consultants interviewed Calabar Export Processing Zone (CEPZ) Management and zone companies. All companies operating in Onne Free Zone import and export via the Onne Port, which is actually comprised of several port areas. NPPLC and customs officials operate in the zone to process these imports and exports. Port Harcourt companies that are not located in the free zone import and export via Port Harcourt. Companies located in Calabar Export Processing Zone (CEPZ) typically import and export via Port Harcourt as well.

4.1.1 Non-Free Zone Importation Procedure According to Federal Officials

Step 1: Investor Applies to Customs Services for ASYCUDA Number and Registration

In order to obtain an ASYCUDA Number, the importer files an application with the NCS. The application includes the following documents:

- Simple application on corporate letterhead (there is no form)
- Lease

- RC Certificate
- Articles & Memorandum of Incorporation
- Tax Clearance Certificates for the previous two (2) years

At the time of submission, the importer pays an N10,000 fee.

The importer may initiate the application at a field command, which will forward it to the NCS' EE&RP Department in Abuja. The importer must travel to Abuja to follow up on the application, or submit it there in the first place.

Step 2: Investor Completes Site Verification

Once the ASYCUDA application has been signed, NCS typically performs an ocular inspection of the intended goods storage facilities, to ensure their actual existence and their appropriateness.

Step 3: Investor Obtains ASYCUDA Registration License and Number

Once the NCS has satisfied itself that the importer's application is in order, it issues a ASYCUDA Registration License and Number. The importer may collect the License at the NCS headquarters in Abuja.

Step 4: Investor Files "Form M" at Commercial Bank

Prior to each transaction, the importer obtains and completes a foreign exchange Form M from a commercial bank. The importer subsequently files the form at the bank.

The Nigerian Central Bank uses the Form M to track shipments entering the country. This form lists the official exchange rate, which enables the clearing agent to determine the currency value in Naira of the goods to be shipped.

Step 5: Investor Opens Letter of Credit

The importer must open a letter of credit to guarantee supplier payment. The importer opens the letter at any "Designated Authorized Dealer" (any one of 64 commercial banks).

Step 6: Investor Purchases Goods and Pays Supplier

Having obtained his Letter of Credit, the importer may proceed to purchase the goods he intends to import. The supplier will provide the importer with an invoice.

Step 7: Investor Submits Invoice and Form M to Pre-inspection Shipping Agents at Port of Loading

The investor submits his transactional documents to his Port of Loading shipping agents.

Step 8: Investor's Shipping Agent Notifies Inspectors

The shipping agent notifies the authorized Pre-Shipment inspectors that the goods are ready for shipment to Nigeria and request a Pre-Shipment Inspection (PSI).

Four (4) companies are authorized to perform this task:

- Bureau Veritas
- Société Générale de Surveillance ("SGS")
- Swede Control Inter
- Cotechna Inspectors

Each of these companies has Nigerian liaison offices in Lagos and in Port Harcourt.

Step 9: Inspector Conducts Pre-Shipment Inspection of Goods

A certified inspector must inspect the goods to verify quantity and quality and thereby assess duty owed. The inspection must be completed prior to cargo's departure from the port of loading.

Step 10: Inspector Issues "Clean Report of Inspection" (CRI)

Following the inspection, the inspector issues a CRI. The CRI shows:

- Origin and Port of Loading of Goods
- CIF Value
- Form M's Number and Date
- Harmonized System (HS) Code
- Name & Address of Importer

Step 11: Nigerian Ports Plc Block-Stacks Containers for Inspection

After shipment and arrival of the ship at a Nigerian port of entry the Nigerian Ports, Plc. (NPPLC –formerly Nigeria Ports Authority, "NPA") block-stacks the containers with the imported goods in an appropriate area for inspection. This process takes approximately 48 hours.

Step 12: Shipping Company Dispatches Documents

The shipping company dispatches copies of the following documents to the Nigeria Customs Service Area Comptroller ("CAC") and to the relevant commercial bank, to complete goods clearance:

- Manifest (within 24 hours of a ship's arrival in a Nigerian port, an electronic version of the Manifest must be filed with the Nigeria Customs Service.)
- Shipping documents
  - Bill of Lading
  - Invoice
  - Form M
  - CRI

Step 13: Investor Collects CRI from Bank

After the shipping company has sent the bank the necessary shipping documents, the importer visits the bank to pay the following:

- The amount indicated on the CRI
- VAT (pursuant to a Self Assessment)
- Applicable Levies (pursuant to a Self Assessment)

Upon receiving the payments, the bank releases the following documents to the importer:

- CRI
- Bank Receipt or "Pay-in Slip"

Step 14: Clearing Agent Prepares "Single Goods Declaration" (SGD)

The importer's clearing agent will obtain and prepare a SGD Form; he will submit it to the NCS, along with any necessary attachments, including (but not limited to):

- Attested Invoice
- Certificate of Origin
- Bill of Landing (or Airway Bill or Way Bill, depending on mode of transportation)
- CRI
- Photocopy of Form M
- Certificate of Insurance for Goods
- Bank Pay-in Slip
- Photocopy of Customs Payment Schedule
- Manufacturer's Certificate of Chemical Analysis (for chemical goods)
- Manufacturer's Standards Certificate (for electrical goods)
- Manufacturer's Certificate with Date of Expiry (for pharmaceuticals)
- Police Department Import Permit (for explosives and fire arms)
- Veterinary Department Import Permit (for animals and insects)

Step 15: Customs Central Processing Center ("CPC") Completes Document Check

A Schedule Officer at the CPC will ensure that the following mandatory aspects of the SGD filing are correct:

- Exchange Rate
- HS Code
- Signature by Declarant
- Attachments
- Conformity of Original and Duplicate Payment Receipt (sent directly by the Bank to the Comptroller–CAC
- Conformity of Bank CRI and Declarant CRI (sent directly by the Bank to the CAC)
- Conformity of SGD with Manifest in NCS log

Concurrently, CPC staff will evaluate information on the computer system to determine the following:

- Whether the value is within the value range
- The applicable rate of duty
- The total duty and charges payable

If the CPC discovers any discrepancies, staff transfer the file to an Error Resubmissions Officer for amendment and resubmission by the importer.

Step 16: Clearing Agent Locates Goods and Informs CAC

After the documents have been checked, the clearing agent and the NPPLC locate the goods and let CAC know where they are. CAC staff transfer the importation documents to the relevant Area Comptroller responsible for physical goods inspection.

Step 17: CAC Comptroller Conducts Physical Inspection

In addition to document verification, all goods in an import shipment are subject to physical inspection. Under a NCS Directive, the *Port Order*, a computer chooses the inspector. The CAC Schedule of Examinations is posted at the CPC.

Step 18: CAC Conducts Non-Customs Examinations

Decree No. 61 of 1999 limits examinations to the NCS, Immigration, and the Port Police, with other bodies (such as the Nigerian Drugs Law Enforcement Agency –"NDLA"; NAFDAC; and the Standards Organization of Nigeria –"SON") allowed to inspect strictly upon NCS invitation. All bodies jointly inspect goods.

SON requires importers to present the following documents:
- CRI
- Bill of Lading
- Packing List
- Invoice
- Other documents

Step 19: NCS Releases of Goods

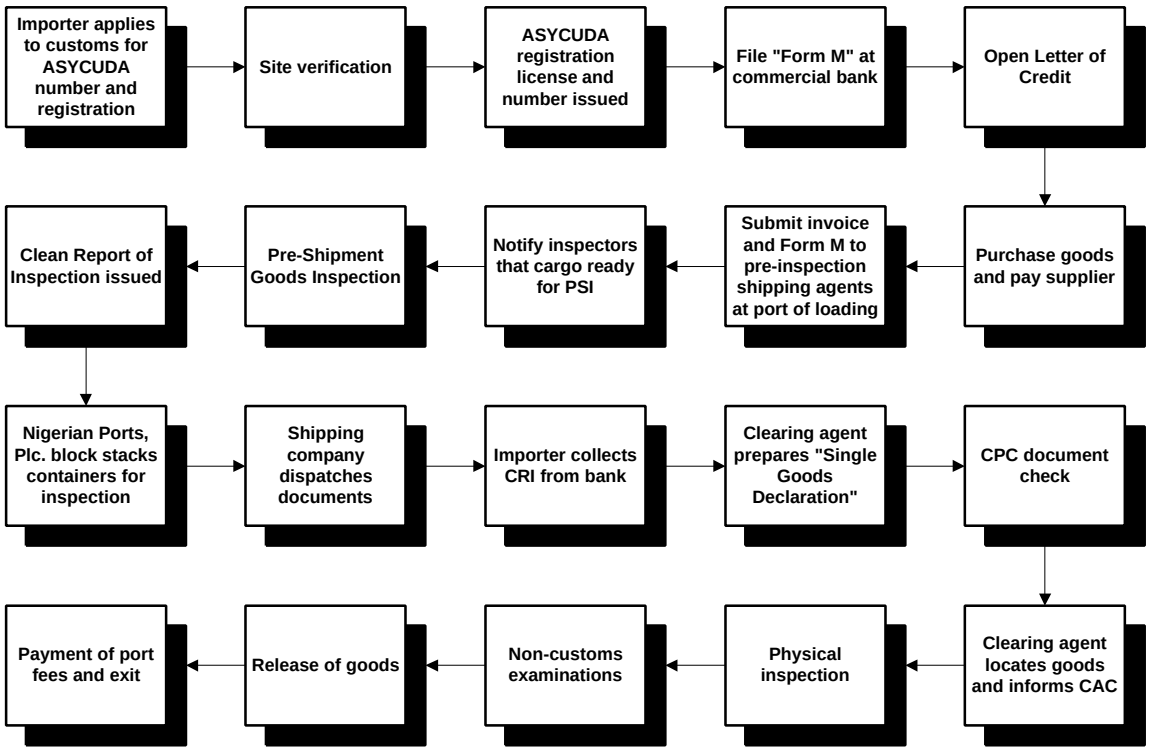
After inspections, the NCS issues a "Release Order."

Step 20: Investor Pays Port Fees and Removes Goods from Port

The investor pays the following port fees:
- Shipping
- Handling
- Demurrage

Upon payment, port officials give the importer a NPPLC "Release Note" or "Release Order." The investor is now free to exit the port with his cargo.

Non-Free Zone Importation Process, According to Federal Officials



4.1.2 Non-Free Zone Importation Procedure, According to Port Officials and Facilitators

4.1.2.1 *Pre-Shipment Importation Procedures*

A number of customs-related steps must be completed prior to the departure of the consignment from its port of exit. These steps are part of the Pre-Shipment Inspection (PSI) that must be completed on all consignments except those that reach their final destination in a Nigerian free zone. An importer can employ a clearing agent to take care of all processes, including the PSI steps, or the company can organize PSI itself and engage a clearing agent only when the goods arrive at the Nigerian port. The following steps outline the process the company must conclude before shipping the cargo.

Step 1: Pro-forma Invoice Sent to Clearing Agent

The company sends the clearing agent a pro-forma invoice for the consignment.

Step 2: Clearing Agent Obtains Form M

The clearing agent obtains a Form M from a Nigerian bank.

Step 3: Clearing Agent Completes Form M

The clearing agent completes Form M and submits it to the bank.

Step 4: Clearing Agent Purchases Cargo Insurance

The clearing agent purchases insurance for the value of the goods to be shipped. The insurance company immediately issues a receipt to the clearing agent.

Step 5: Clearing Agent Provides Insurance Receipt to Bank

The clearing agent provides the bank with a receipt confirming insurance purchased.

Step 6: Bank Approves Form M

The bank reads and approves Form M.

Step 7: Bank Sends Form M to Other Agencies

The bank send copies of the approved Form M to the Nigerian Central Bank, the Nigerian Customs Authorities, the Nigerian Department of Statistics, and the relevant PSI company.

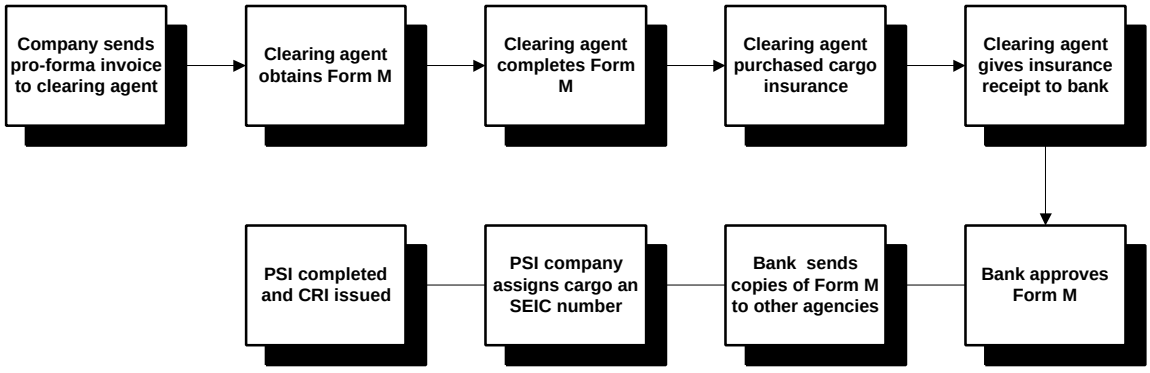
Step 8: Authorized PSI Company Assigns Cargo an SEIC Number

The PSI company assigns an SEIC number to the consignment (the PSI company assigns an SEIC number for each Form M approved).

Step 9: Authorized PSI Company Completes Inspection and Issues CRI

An inspection agent completes the PSI. The inspection agent then furnishes the company with a Clean Report of Inspection (CRI). The CRI includes a determination of the duty the company owes the Nigerian government for the particular consignment.

Non-Free Zone Pre-Shipment Importation Procedures



4.1.2.2 *Post-Shipment Importation Procedures*

Once the consignment has undergone the PSI and a CRI has been filed on it, the port of entry customs process begins. The following steps must be completed once the

consignment has been shipped to Nigeria and before it will be released to the importing company via his clearing agent.

Step 1: Clearing Agent Obtains SGD Form C2010

The process starts with the clearing agent purchasing a booklet of Single Goods Declaration (SGD) Forms from the (NPPLC). The booklet contains 25 separate SGD forms, and costs N7,500. The SGD form is also called Form C2010.

Step 2: Company Provides Clearing Agent with Necessary Documents

The company gives the clearing agent all necessary customs documents for the incoming consignment (see above section on procedure according to Federal Officials), including a copy of the CRI.

Step 3: Clearing Agent Calculates All Duties Owed

Based on the documents provided, the clearing agent calculates the amount of duty the company owes to Nigerian customs. The Clean Report of Inspection (CRI) lists the amount of duty to be paid, but does not account for any of the additional required taxes that are due upon entry and before goods are released to the company:

- Port Surcharge: 7% of the duty amount
- Ecowas Levy: 0.5% of the duty amount
- CISS Inspection Fee: 1% of the FOB value
- VAT: 5% of the total amount of duty, all above levies, and CIF value (indicated on CRI)

Step 4: Company Pays Duties Owed

The clearing agent notifies the company of the total amount owed to the customs authority. The company pays the amount owed into one of Nigeria's 28 designated customs payment banks. If there is a duty amount dispute with customs, the cargo is supposed to be released if the company has paid any portion of the duty owed. However, this does not always happen.

Step 5: Bank Issues Receipt Confirming Duty Payment

The bank immediately issues the clearing agent a payment receipt, verifying duty payment. With the receipt, the clearing agent can claim the original CRI.

Step 6: Clearing Agent Prepares SGD Form C2010

With the original CRI, the clearing agent prepares the customs entry form (Form C2010 or SGD form) on behalf of the company.

Step 7: Clearing Agent Takes All Documents to CPC at Port

The clearing agent takes the completed customs entry form and all other necessary documentation to the CPC at the port. The clearing agent approaches the deputy

comptroller and submits all documents to him. The Deputy Comptroller signs for acceptance of these documents.

Step 8: Deputy Comptroller Reviews Documents

The Deputy Comptroller reviews the customs documents and passes them to a desk officer.

Step 9: Desk Officer Verifies CRI

The desk officer confirms that the company or clearing agent has submitted the CRI. He then passes the documents to the Accounting Office.

Step 10: Accounting Office Confirms Duty Payment

The Accounting Office confirms duty payment. The accounting department looks at the duty payment receipts in the documents and compares them with the Central Processing Center's bank records. This office then passes the documents back to the Deputy Comptroller.

Step 11: Deputy Comptroller Verifies Documents a Final Time

Satisfied that the documents are in order, the Deputy Comptroller passes the documents to the Officer in Charge at the ASYCUDA Office. All of the steps from 7-11 are completed within 24-48 hours according to customs officials.

Step 12: ASYCUDA Assigns Consignment a Serial Number

The Officer in Charge in the ASYCUDA Office enters the details from the documents into the computer and creates a report indicating that he is either satisfied with the documentation or not. At this time, he assigns a specific serial number to the cargo, which is computerized. He gives the clearing agent the specific serial number for his cargo. Since for the most part clearing agents loiter in the ASYCUDA office or continue to return while awaiting the number, it is easy for the ASYCUDA officers to quickly relay this information to the clearing agent. Once the serial number is issued, the ASYCUDA Office sends the documents to the Manifest Department

Step 13: Manifest Department Verifies Bill of Lading

The Manifest Department verifies that the bill of lading number presented corresponds to the ship's manifest that the department has on record. After verification, the Manifest Department sends the documents to the Customs Examination Shed.

Step 14: Customs Examination Shed officers Check Cargo Against Documents

Customs Examination Shed officers check what is on the record with what is actually in the cargo. If customs officials deem it necessary, they invite the drug enforcement agency and any other relevant agencies to inspect the cargo as well.

Step 15: Valuation Unit Inspects Cargo

Also in the Customs Examination Shed, the Valuation Unit inspects the cargo.

Step 16: Customs Officials Release Goods to NPPLC

Once customs officials in the Customs Examination Shed are satisfied that the bill of entry matches the actual cargo, they sign the release note. This releases the goods to the NPPLC.

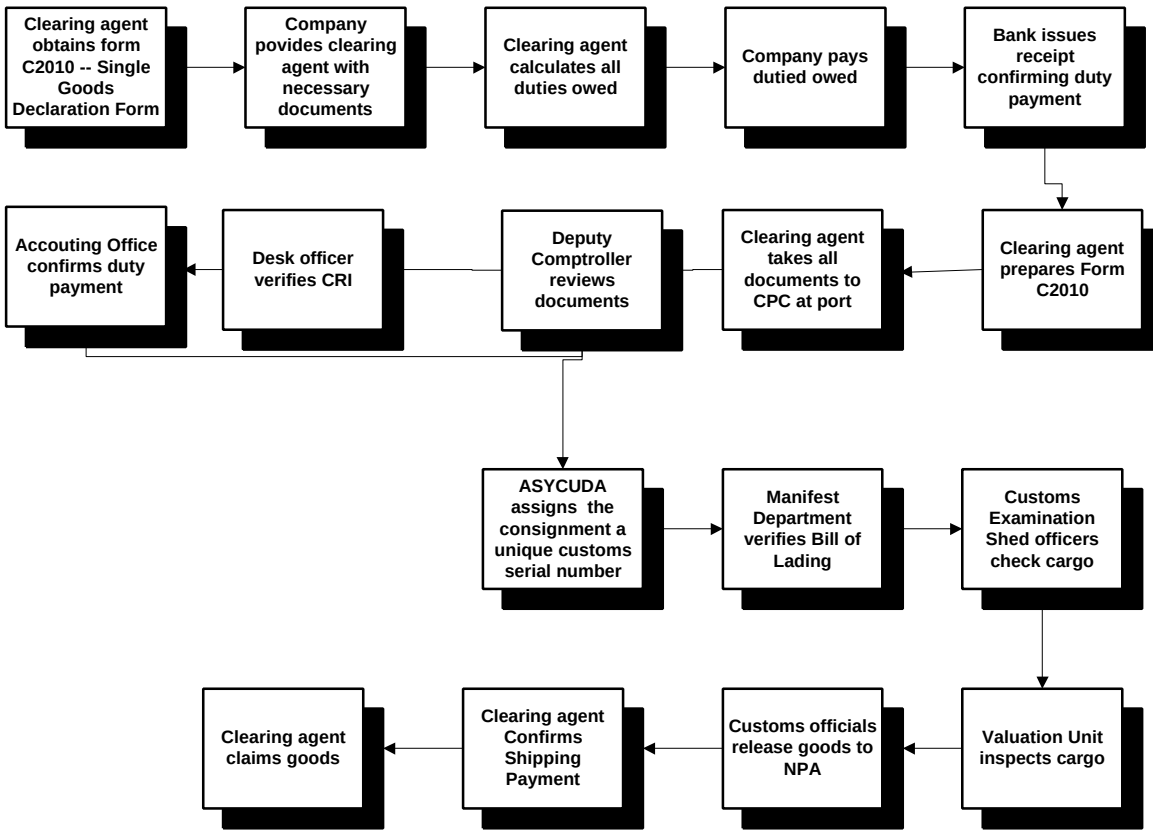
Step 17: Clearing Agent Confirms Payment at Shipping Company

With the release note, the clearing agent visits the shipping company. Here, the clearing agent shows proof of payment to the shipping company for cargo transport. The shipping company gives the clearing agent a release note upon confirmation of the payment.

Step 18: Clearing Agent Claims Goods on Behalf of the Importer

The clearing agent takes delivery of the goods on behalf of the importing company.

Non-Free Zone Post Shipment Importation Procedures



4.1.3 Non-Free Zone Exporting Procedure, According to Port Officials

The government no longer restricts most exported goods. The remaining restricted exports include crude oil, works of art and artifacts, and endangered species such as flora/fauna, plants, and animals.

However, Nigeria requires a pre-shipment inspection of all exported goods, oil and non-oil. The government does not require pre-shipment inspection for goods exported from the country's free zones unless the goods are exported into Nigerian territory.

All exporters must follow the procedure set forth below:

Step 1: Exporter Transports Cargo to Port

Exporter brings cargo to port of departure, where the cargo is stored in the port's stacking area prior to loading.

Step 2: Clearing Agent Organizes and Completes Pre-Shipment Inspection

The exporter's clearing agent organizes the pre-shipment inspection procedures.

Step 3: Clearing Agent Submits a Shipping Note and Customs Bill of Entry

The clearing agent submits a Shipping Note and a Customs Bill of Entry to the NPPLC's Marketing Department, located at the port. The Shipping Note includes the following information:

- Exporter's name
- The name of the ship that will carry the goods
- Cargo description

The Shipping Note enables the Marketing Department to determine the amount of duty owed. The Customs Bill of Entry enables customs officials to examine and release the goods.

Step 4: Customs Official in Marketing Department Stamps Shipping Note

The Marketing Department customs official stamps the Shipping Note, confirming the cargo's tonnage and export duty. The customs official gives the clearing agent a bill for the export duty owed.

Step 5: Customs Officials Inspect Cargo

Customs officials inspect the cargo to verify that it corresponds to what is marked on the Shipping Note and the Customs Bill of Entry.

Step 6: Clearing Agent Pays Duty

The clearing agent pays the export duty owed at one of the designated customs duty banks. The bank immediately issues a receipt and the clearing agent makes photocopies of it.

Step 7: Clearing Agent Submits Duty Payment Receipt to Traffic Department

The clearing agent submits a copy of the duty payment receipt to the NPPLC's Traffic Department at the port.

Step 8: Traffic Department Completes Export Tally Sheet.

Traffic Department officials draw up an export tally sheet for the consignment.

Step 9: Cargo Delivered to Loading Area with Export Tally Sheet

The cargo is delivered to the export loading area; the export tally sheet is attached to the consignment.

Step 10: Cargo Loaded onto Ship

In the process of loading, the NPPLC's and the shipping company jointly record the goods. At the completion of each set of tally sheets, the shipping company endorses them to confirm receipt of cargo.

Step 11: Shipping Company Distributes Original and Copies of Bill of Lading

When the loading process is complete, the shipping company gives the clearing agent a copy of the Bill of Lading. The shipping company also dispatches the original Bill of Lading to the importer at the port of destination.

4.1.4 Analysis

The importing and exporting procedural flow charts illustrate relatively simple and rational processes. Clearing agents pointed out declining form redundancies. Moreover, NPPLC boasts a 5% error rate in the customs process – indicating that despite being long and cumbersome, the process is manageable for well-versed clearing agents. Customs officials note that errors result largely from insufficient payment or typographical errors.

The private sector did not indicate that the customs procedures are inordinately troublesome, possibly because clearing agents take care of the actual steps. Clearing agents usually know the customs processes very well, and are also typically familiar with the customs agents.

16 NCS area commands (including all busy border stations, port, and airports) operate under the ASYCUDA system.

Nigeria has acceded to two chapters of the *Kyoto Convention* but has received and is in the process of studying the most recent *Kyoto Convention Amendment Protocol*. The CG of Customs has written to the Ministry of Finance requesting funding for a *Kyoto Convention* seat, in order to harmonize Nigerian customs norms with the worldwide standards. Nigerian Customs believes its regulatory procedures conform to the spirit of Kyoto, although "there may be over-zealousness in the field."

Clearing agents, company representatives, and customs officials noted a number of bottlenecks in the system:

- There are some redundancies in the importation process: for instance, as the flowchart indicates, the dossier of customs documents returns to the Deputy Comptroller to be passed elsewhere. Furthemore, the same documents are reviewed, in turn, by: the Deputy Comptroller (twice); and Desk Officer; the Accounting Office, the Manifest Department; and the (sometimes) SON. Finally, inspections are, in turn, conducted by: Customs officials; Valuation officials; and non customs officials (as appropriate).

- A number of private sector representatives noted that customs procedures are frequently corrupt and typically not customer-friendly.

- Customs officials, clearing agents and private companies all indicated that the process and the regulations governing import and export are difficult to understand. For instance, companies pointed to a complicated duty payment tariff structure.

- The Form M process represents a significant bottleneck –requiring additional reconciliations and paperwork (e.g., matching receipts, etc.). Clearing and forwarding agents note that importers typically avoid Form M financial obligations by dealing with port-based syndicates; for a fee of N1,000-N4,500, syndicates provide a From M and forge bank signatures and stamps.

- Moreover, since NCS has no accounting office at ports of entry, importers must visit commercial banks to complete duty payments. The consultants discovered that these banks often attempt to coerce importers to conduct all financial affairs with them.

- A customs clearance & freight forwarding agent explained that, in practice, NCS does not require importer ASYCUDA numbers. Instead, small importers simply use their clearing agent's ASYCUDA number, and large importers pay NCS officials between N3,000-N5,000 to waive the requirement. In fact, ASYCUDA registration apparently requires non-statutory payments of N20,000-N50,000, in addition to an N10,000 official payment. ASYCUDA registation requires two (2) weeks and is evidently taken so lightly that NCS does not even bother with site inspection.

- NCS provides little information on the importation and exportation processes. For instance, no Customs Tariff Codes are in circulation. The tariff codes are supposed to be offered free of charge; instead, investors indicate that they must purchase the codes from NCS officers. One customs clearance & freight forwarding agent noted that the codes are useless anyway since all import clearance transactions are ultimately a question of non-statutory payments to NCS officers.

- Customs officials and the private sector noted that there are far too many government agencies represented at the port – slowing the importation process in particular. Most agree that all enforcement agencies – such as drug

enforcement and arms control -- should not have a permanent presence in the port. Customs officials explained that when these agencies are present, they insist on checking every shipment, resulting in non-authorized, multiple, and separate examinations. In practice, this crowds the customs sheds and increases processing confusion. While the government is decreasing the number of agencies allowed at the port (under Decree No. 61 of 1999), and allowing NPPLC customs officials to call in the relevant inspection agencies when necessary, this transition is not yet complete. While the Fire Brigade, Department of Forestry, Army, Air Force, Navy, and certain others appear to have vacated port facilities, there is still consternation over the continuing presence and liberty of action of such agencies as NAFDAC and SON. According to a clearance and forwarding agent, an importer must pay each inspecting officer between N500-N1,000 to sign the relevant release documents. The NCS and NIPC hold the NPPLC accountable for this persistent problem and suggest that greater NPPLC-NCS coordination to enforce the 1999 decree.

- One company noted that duty disputes are particularly troublesome, because port customs officials do not adhere to policy. In the event of a duty dispute, customs officials are supposed to release the cargo as long as the importer has paid some portion of the duty. Customs will resolve the dispute following cargo release. However, the company noted that port customs frequently retains the cargo pending resolution.

- There is a discrepancy in the processing time for customs procedures. While NPPLC officials claimed that the importation process is typically completed in 3 to 24 hours, Nigerian Customs Service representatives note that when documents are in order, goods clear the port of entry within 48 hours. While importers can pre-clear the SGD in the NCS system ahead of cargo arrival by telexing the manifest and CRI in advance, private sector representatives indicated that normal processing time is between several days and two weeks. Clearing agents noted that the quickest clearance time is four days, and that is for diplomatic cargo that has been properly "facilitated." They further indicated that non-diplomatic cargo requires about ten (10) days to clear, assuming correct documentation and non-statutory payments between N25,000–35,000 per container (size dependent). All sources agree that duty disputes and incorrect documentation can delay the process considerably.

- Currently, Nigeria requires 100% physical inspection; however, the NCS also has a goal to clear all imports within 48 hours of arrival. In practice, therefore, the NCS exercises discretion in completing inspections: Typically, the NCS inspects 20-30% of cargos when they are homogenous in nature, and when the NCS knows the importers to be honest. The NCS and the private sector confirm these ratios, although clearing agents suggest the ratio is closer to 50%. The NCS indicated that it maintains tight physical inspection controls because currently Nigerian ports have no scanners.[37] Some NCS officials also explained that 100% inspections remain necessary due to high smuggling incidence and because the law continues to require it. They noted that all discretion to the rule is in direct contraction to the law.

[37] Currently, NCS has a request for 1-3 scanners for each port exit gate at Lagos Port and Port Harcourt before the Federal Executive Council.

- Customs procedures are slowed by other factors, including the pre-shipment inspection process, foreign exchange issues, non-customs examinations, and port requirements.

- Even the NCS views the import pre-shipment inspection process as unnecessary and overly bureaucratic. Since NCS opens and inspects the majority of containers upon arrival, the PSI appears to waste valuable time. Customs officials and clearing agents estimate that the PSI process requires 2-3 weeks. Clearing and forwarding agents further indicated that private inspectors are on the take.

- The NPPLC delays alone take approximately 1-21 days. Given the absence of inland container terminals, those at port are congested, resulting in a potential delay of three (3) weeks for berth assignment. Shipping companies pay NPPLC officers non-statutory fees for a speedier berth assignment. Off-loading at berth is quick, but infrastructure constraints slow dispersion beyond berths to container terminals. With a payment of N15,000/20 ft. container, clearing and forwarding agents can move their goods to a container terminal within 48 hours.

- On the export front, the Pre-shipment Inspection process seems wholly unnecessary and outdated in today's world of efficient export-oriented regulation.

- Moreover, the continued existence of export stamps and duties would also appear to be out of synch with current international practice.

- Nigerian customs procedures are further slowed by limited operation hours. In this day of 24/7 global customs clearance, Nigerian port hours are simply inadequate. In Lagos, the Marketing Hall closes at 5:00pm and the entire port closes at 9:00pm. There is no processing on weekends and the port is entirely closed on Sundays.

- On the ground, implementation of customs and import/export procedures is stymied by poor facilities. The consulting team visited numerous offices, which were uniformly crowded and lacked filing cabinets. Document files sit on shelves, desks, or on the floor. Many offices lacked telephones. Where phones exist, they appear unreliable: One customs official explained that he has a difficult time communicating with Abuja because the telephones are frequently nonfunctional.

- Nigeria's publicly-owned port facilities and equipment are inefficient and outdated. Shippers estimate that "associated port costs" at Lagos Port -- approximately $200/container -- are three (3) times higher than any other West African port.

- Moreover, Customs officials in the ASYCUDA Office indicated that clearing agents come in and out freely, and often verbally "encourage" the ASYCUDA officials to move their cargo along quickly.

- Technological challenges remain daunting. An electronic declaration and clearing system is not yet envisaged at this point. MUB and EPZ operators remain unable to connect to the NCS ASYCUDA system network. The NCS does not yet have e-mail capabilities, either at Headquarters in Abuja or at area commands, making electronic transmission of manifests and other documents difficult.

- The NCS also suffers from human resource problems. The NCS has a staff of 20,000 agents. Customs agents are not provided with government housing and are, it would seem, regularly reduced to squatting in the areas they are assigned to when transferred. Some senior level customs officials noted that junior staff in particular suffer from low morale. NCS officers' salaries range between approximately N3,000–5,000/month. Senior officials further noted that there have been salary payment delays. They also noted the absence of any travel allowance.

  The NCS has attempted to address low morale, partly by instituting performance awards and a sports service. According to headquarters, the NCS has well-articulated training programs; however, some officers disagree. Field command staff, who learn their trade on the job, regard existing Customs School training as inadequate.

  According to some customs officials, insufficient human resources funding, resulting in low pay and low morale, creates ample temptation for corruption.

- It was unclear to the consultants why the NCS cannot fund Kyoto Participation and scanners from its operating budget, a question bearing clarification. %

4.1.5 Recommendations

- The consulting team recommends that the Federal Customs Authorities rationalize the existing tariff structure: to consolidate the numerous duties into several main tariffs. The consultants are not suggesting that the Nigerian Government adjust the tariff rate; the team merely recommends that the tariff structure be simplified.

- The consultants commend current efforts to organize the customs process by removing enforcement agency representation from the ports. The consulting team recommends that the Nigerian government and port authorities continue with such efforts. Port customs officials are trained to recognize types of cargo and surveillance demands; therefore, they are qualified to call in enforcement agency staff when needed.

- Based on investor and clearing agent comments, the consulting team recommends that the government and port authorities clarify and strengthen the duty dispute process. Following international best practice, port customs officials should not hold cargo under a duty dispute throughout the resolution period.

- In order to increase customs efficiency and thereby improve the process, the consulting team recommends that the Nigerian Government improve customs facilities. Though only a sampling of all customs facilities, those that the

consultants visited should be outfitted with basic office equipment, such as functioning telephones. Better office and other facilities will increase efficiency and create a more professional environment – both of which will improve investor perception of the import/export process.

- The consulting team suggests that the government take steps to reduce opportunities for customs officials to employ discretionary tactics, such as accepting unofficial payments. All importing and exporting customs procedures should be made clear to investors, clearing agents, and to all level of customs officials. Furthermore, the customs authorities should prioritize continuous training of customs officials on official procedures. The customs authorities must also recognize that employees should have a salary and benefits package that is attractive enough to reduce the incentive for discretionary activities.

- The consultants recommend that Nigeria increase opportunities for private participation in ports infrastructure and logistics, including through BOT, BOO, and Management Contract schemes.

- The NCS also stated that if it could keep even 10 % of what it collected, would be funding generators, PCs, scanners, e-mail capability, and other technology as well.

- On the import procedures side, it is recommended that documentary verification by all concerned officers (including the Desk Officer, Accounting, Manifest Department, Non-customs agencies, and the Deputy Comptroller) be conducted simultaneously.

- Likewise, inspections should be conducted jointly by all concerned agencies and Departments (including Customs, Valuation, and Non-Customs agencies such as SON).

- Import and Export procedure Guidebooks and Customs Tariff Schedules should be widely disseminated.

- The Form M procedure should be eliminated.

- Likewise, the PSI procedures, both at import and export, should be eliminated.

- NCS diligence in the administration of ASYCUDA scheme should be increased.

- Legal inspection requirements, in terms of percentage of containers verified, should be brought in line with NCS practices.

- Export stamps and duties should be eliminated.

- NCS and NPPLC port administration offices' opening hours should be extended, and Sunday and Holiday opening hours instituted.

- Cargo should be released to importers pending resolution of duty disputes.

- Finally, all chapters of the Kyoto Convention should be ratified by Nigeria, post haste.

4.1.6 Free Zone Importation and Exportation Procedures

Nigeria has two (2) operational free zones, in Onne and in Calabar, as well as a third in the planning stages, at Kano. Zone incentives include the following:

1) Duty-free export production;
2) Exemption from foreign exchange regulations, free repatriation of capital, and free remittance of profits and dividends;
3) 100% foreign ownership;
4) Liberalized hiring of expatriate personnel;
5) Exemption from all import and export licenses;
6) Right to release up to 25% of production in the Nigerian Customs Territory, subject to proper permits, Customs guarantee forms, and payment of applicable VAT and duties[38];
7) Rent-free land during facilities construction; and
8) Total tax exemption.

4.1.6.1 *Onne Oil & Gas Free Zone Importation*

Under a five-year agreement with the Nigerian Government, DMS International Ltd. has managed the "Onne Oil & Gas Free Zone" outside of Port Harcourt since 1997. The Onne Free Zone has been relatively successful under private management and currently hosts 63 companies.

Companies located in the Zone must comply with the following import procedures:

Step 1: Shipping Company Sends Importer Arrival Information and Manifest to Zone Management

The shipping company notifies the importer of the day the ship will arrive at the relevant port.

Step 2: Importer Notifies Free Zone Management of Cargo Arrival and Requests Release

The importing company notifies free zone management of cargo's arrival. The clearing agent requests release of the consignment.

Step 3: Free Zone Management Issues Release Request Letter

Based on the ship's manifest and the importer's cargo it identifies, Free Zone Management issues a release request letter to the Chief Area Comptroller at Port Customs. The letter requests that customs issue an approval for the shipping company to release the cargo and for the cargo to be transferred to the importer's free zone dedicated area – under the custody of Free Zone Management.

[38] Certain companies in the EPZ scheme indicate having been able to obtain a 50% CT release quota, in spite of the provisions of sub-section 18(e) of the Decree.

Step 4: Chief Area Comptroller Orders Manifest Closed

The Chief Area Comptroller approves the transfer request. He sends a request letter, stamped with his approval, to the Manifest Office, ordering that the manifest be closed, and confirming that the said cargo will be moved to the free zone.

Step 5: Manifest Office Sends Closed Manifest to Deputy Comptroller

The Manifest Office sends the closed manifest to port customs Deputy Comptroller. The Deputy Comptroller stamps confirmation of its closure and sends it to the Free Zone Area Comptroller in the port.

Step 6: The Free Zone Area Comptroller Sends Transfer Approval Letter to Free Zone Management

The Onne Oil & Gas Free Zone Area Comptroller dispatches the letter approving cargo transfer to Free Zone Management personnel.

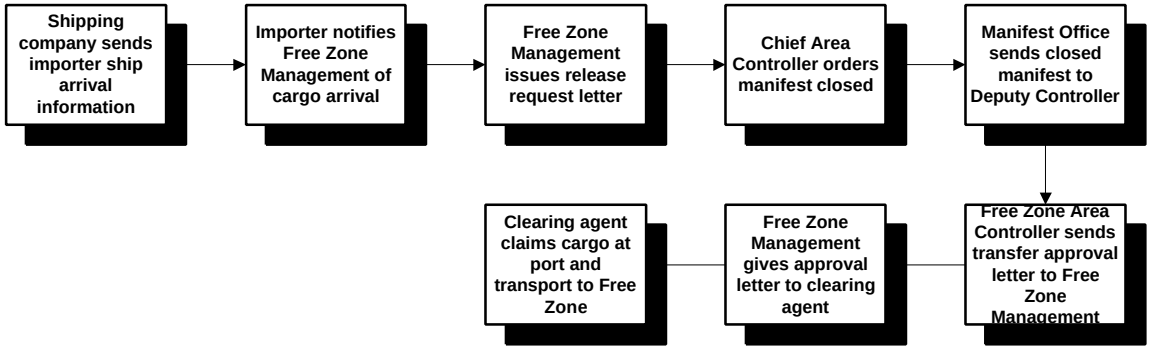
Step 7: Free Zone Management Gives Approval Letter to Clearing Agent

Free Zone management personnel send the cargo transfer approval letter on to the importer's clearing agent. This is the last document the clearing agent needs to claim the cargo at the port of entry.

Step 8: Clearing Agent Claims Cargo at the Port and Transports to Zone

With the cargo transfer approval letter, the clearing agent returns to the port and claims the importer's consignment. The clearing agent oversees the cargo's transfer to the Free Zone.

Onne Oil & Gas Free Zone Importation Process



4.1.6.2 *Analysis*

The customs import and export procedures in the Onne Oil & Gas Free Zone are simpler than the procedures non-free zone companies face. This is due, in large part, to the fact that free zone locating companies do not pay import or export duties on goods that

do not enter Nigerian territory. The absence of duty payments for such goods cuts out a considerable number of steps in the process – for examination, verification, duty payment, etc.

Companies favor private zone management. Although they pointed out some problems with zone functioning, they agreed that private management has affected positive change over the past three years.

A few opportunities for procedural fine-tuning nevertheless exist:

- Zone located companies note that the customs process frequently takes longer than Free Zone Management claims. While Zone Management indicated that goods clear customs in 24 hours, companies noted that processing time is closer to three (3) days and often between one and two (2) weeks. Unreliable infrastructure exacerbates customs and port processing delays. Companies noted that poor telephone capacity – and thereby fax and internet – contribute to customs processing delays. One company noted that telephone service in the Zone is only effective approximately 35 % of the time.

- Although Zone Management indicated that the Zone will eventually host representatives from all of the necessary federal agencies, at present Onne Free Zone requires some outside authorizations from federal agencies. This means that documents and applications for some procedures must travel to Abuja for approval. This is typically not the case with customs procedures, however.

4.1.6.3 *Recommendations*

- The consulting team strongly recommends that the Free Zone Management improve the Zone's telecommunications infrastructure. Investors expect and deserve better services within the Zone, and should not suffer under severely limited Internet, fax, and telephone service.

- Zone Management, the Nigerian Export Processing Zone Authority (NEPZA), and the Nigerian Government should rapidly ensure that all government agencies are represented within the Zone. If all agencies relevant to the investment process are located in the Zone, the start-up, locating, employing, and operating investment processes will function more efficiently. This should be a priority.

4.1.6.4 Calabar EPZ Importation

The Calabar Export Processing Zone (CEPZ), a small-scale 152-hectare industrial estate in Cross River State Nigeria, was officially established under the *Federal Government of Nigeria Decree No. 63* of November 19th, 1992.[39] The Calabar Export Processing Zone Authority (CEPZA) manages CEPZ. CEPZA is a federal government agency accountable to the NEPZA, which is in turn accountable to the Ministry of Commerce. CEPZ is also accredited by the NEPZA, which is set to become an

[39] *Nigeria Export Processing Zones Authority Decree 1992, Extraordinary Supplementary to the Federal Republic of Nigeria Official Gazette* No. 67, Vol. 79 (21st December 1992), Part A, page A-564, Ministry of Information and Culture, Printing Division, Lagos.

exclusively regulatory body and is in the process of transferring all Nigerian EPZs management to the private sector. State Governor Donald Duke has demonstrated great ambitions and political commitment to the project, as have Customs Comptroller General Minister of Commerce. The Zone has now been designated to become a "Free Trade Zone" ("FTZ") to allow access to non-manufacturing investors. President Obasanjo, who visited the Zone shortly after taking office in 1999, is set to officially commission the new Calabar FTZ ("CFTZ") during 2001.

CEPZ Companies use the Calabar Port almost exclusively for imports; the port is not sufficient to meet their export demands. CEPZ companies export from Port Harcourt.

A "Customs Export Scheme" has been devised to provide a safe corridor for goods from port of entry to point of clearance in the CEPZ. It involves the following import and customs procedures:

Step 1: Company Notifies Zone Management of Import Consignment

Prior to the arrival of goods at a port of entry, the investor notifies Zone Management of the consignment's impending arrival. The investor accomplishes this by emailing, faxing, or dispatching Zone Management the details of the consignment. The following documents must accompany the notification to Zone Management, and they must all be addressed to the consignee with the Zone address.

- Copy of valid Zone operating license
- Copy of final invoice
- Copy of Packing list
- Copy of Verification certificate if required by port of origin
- Copy of Bill of lading (including a statement that PSI is not required)
- Letter of Request for Transportation and Customs Escort

Step 2: Zone Management Approves "Release Document" Processing

Zone Management notifies the company that it has received the consignment importation letter and will process the importation release document.

Step 3: Zone Management Issues Certificate of Release

After studying the submitted documentation, Zone Management issues a certificate of release in the form of a letter. Zone Management forwards the certificate of release to Zone Customs, who forward it to Customs at Calabar Port. If Calabar Port is not the port of entry, Zone Customs endorses this release and forwards it to customs authorities at the consignment's port of entry. This letter authorizes Port Customs to release the cargo to the Zone, under escort.

Step 4: Clearing Agent Meets Consignment at Port of Entry

When the consignment arrives, the clearing agent delivers a copy of the above documents to the customs officer at the port of entry. Port Customs officials clear the goods without examination.

Step 5: Port Customs Officials Release Consignment

Satisfied that the consignment is destined for CEPZ property, port customs officials release the consignment.

Step 6: Consignment Transferred to CEPZ

The consignment is transferred to the CEPZ under port of entry customs escort. Upon arrival at the Zone, port of entry customs hand the consignment over to Zone Customs in the presence of other Zone staff.

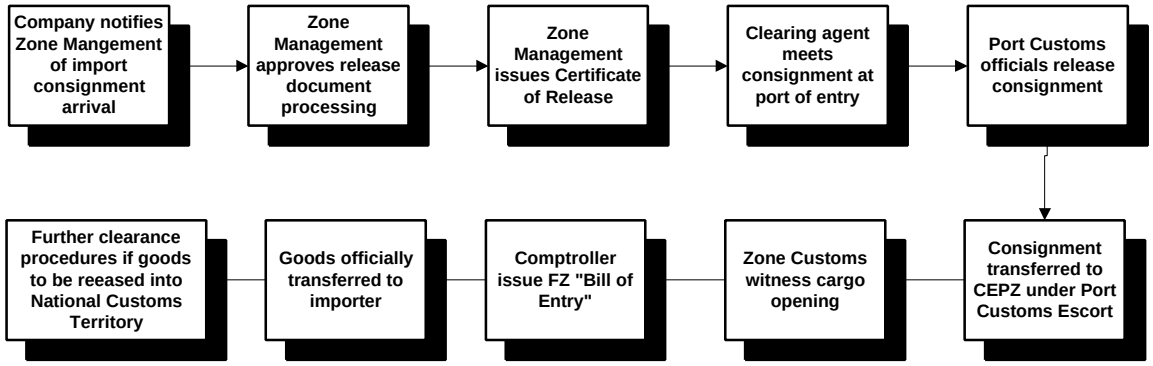
Step 7: Zone Customs Witness Cargo Opening and Issue "Bill of Entry" into FZ

Zone Customs' staff witness the opening of cargo in the importer's warehouse. Tally officers check goods with the packing list.

Step 8: Goods are officially transferred to the importer

Zone Customs transfer the goods to the importing company, completing the importation process. The importer must complete standard declaration and documentary procedures only if he intends to release goods into the National Customs Territory.

Calabar Export Processing Zone Importation Process



4.1.6.5 *Calabar EPZ Exportation*

Companies located in the CEPZ must complete the following procedures on export:

Step 1: Company Prepares Invoice and Packing List

The exporting company, or its clearing agent, prepares a cargo invoice list and a packing list.

Step 2: Company Requests Export Authorization from Zone Management

The clearing agency sends a letter to Zone Management requesting authorization to export of cargo. Zone administrative fees equal to 1% of the export value of the cargo are assessed by CEPZA.

Step 3: Company Informs Zone Customs of Export

The clearing agent also notifies Zone Customs officials, via a letter, of the company's intent to export.

Step 4: National Drugs Law Enforcement Agency (NDLA) Inspects Export Consignment

NDLA officials inspect the export consignment in the Zone. At the same time, any other necessary inspections are completed within the Zone.

Step 5: Container is Closed and Sealed

Zone Customs officials close and seal the container, in the presence of Zone Management representatives and exporting company representatives.

Step 7: Company Obtains Gate Passes from Zone Management

The company requests and obtains a gate pass from Zone Management. This authorizes the clearing agent to remove the export consignment from the Zone and transport it to the port of exit.

Step 8: Zone Customs Escorts Consignment to Port

Zone Customs representatives escort the export consignment to the port. The escort ensures that the consignment is transported directly to the port of exit. The clearing agent accompanies the consignment to the port.

Step 9: Clearing Agent Presents Export Documentation to Port Customs Officials

The clearing agent submits all export documentation for the export consignment to Port Customs officials. Port Customs officials take custody of the consignment from Zone Customs officials. The consignment requires no further inspection and is moved to the wharf for export.

4.1.6.6 *Analysis*

CEPZ Management appears competent and proactive. The Zone's investors appear pleased with Zone Management and have few complaints.

- The Federal Executive Council's Inter-Ministerial Implementation Committee is currently considering a dual expressway on the Calabar-Itu-Ikot-Ekpene-Aba-Port Harcourt–Enugu link. The government is also reviewing plans to provide a cargo warehouse and apron to facilitate movement and cargo storage at the Calabar International Airport. Finally, the government is considering airport expansion to accommodate large aircraft. However, procedural problems remain important, including the following:

- Zone users support private management, both in terms of quantity/quality of services and administrative process efficiency. Several CEPZ investors point to Onne as a positive example of what Calabar might become under private management.

- Zone Management indicates CEPZA has been operating on the basis of self-financing to date and has thus limited revenues for its services. While the Zone's original feasibility study, accepted by the Nigerian Federal Government, recommended that the Federal Government fund the Zone for 10 years, the Government has only recently agreed to release funds to accelerate development. Indeed, while the Government had allocated a N100 million operating budget for the Zone over a four-year period ending December 31, 2000, the money never came under the control of Zone Management. Audits have been carried out to attempt to assertain what has become of allocated funds. To finance its operations, the Zone assesses fees from interested Zone applicants and occupants.

- Transportation infrastructure within the Zone is not optimal. The closest port, the Port of Calabar, is located four (4) miles from the Zone and port access is sub-optimal. Furthermore, the port's navigational facilities are antiquated. Due to silting, the port is too shallow for all but small vessels under 15,000 tons. A mere 8.5 meters deep, the local river serves as a poor sea transport conduit to the Zone. Freight, port, and traffic structures are prohibitive, resulting in deserted berths and a nearly abandoned port.

- Some of the Zone Management claims are misleading. For instance: "All government functions are accomplished within the Zone, 24 hour one-stop licensing."

CEPZ companies also noted some dissatisfaction with import and export processes because of poor relations between Zone Customs officials and NPPLC officials (chiefly in Port Harcourt). For instance:

- One company indicated that while customs officials located in the Zone are very good, there are significant problems in the import/export process because companies must interact directly with Port Customs. The company explained that there is little coordination between Zone and Port Customs officials. One company indicated that Port Harcourt customs officials do not uphold free zone customs policies. This has resulted in Port Harcourt Customs officials holding up export shipments from one company at least five times in two years. Contrary to free zone protocol, Port Harcourt Customs officials insist on opening and inspecting CEPZ cargo. Companies explained that they circumvent this bottleneck with "under-the-table" payments to Port Harcourt customs officials.

- Several companies stressed that they must deal directly with the NPPLC outside of the Zone, where they facilitate cargo importation and exportation through direct communication with NPPLC and Port Customs officials, as well as through unofficial payments aimed at smoothing out and speeding up the import and export process.

4.1.6.7 *Recommendations*

- The consulting team strongly recommends that the Nigerian government work with both Zone and Port Customs to improve relations between them. There is no reason why investors should suffer slow or ineffective service because of possible jurisdictional disputes between two sets of Nigerian customs officials. The consultants suggest that all parties redefine their roles, and that the government establish training programs to alleviate any jurisdictional conflicts.

- The consultants also suggest the Nigerian Government develop a CEPZ privatization track. The Zone needs efficient private sector management, such as that currently provided by DMS in Onne. Moreover, private management options should be reconsidered in the context of the likely privatization of Calabar Port.

- Currently, the government requires no standard Management Agreement between the Nigerian Export Processing Zones Authority ("NEPZA") and Zone operators. However, NEPZA might consider formalizing its legal relationships in this regard. Under the emerging two-tier zone management scheme, zone operators such as DMS run their zone and pay "ground rent" (leasehold fees). South African developers could for instance be particularly targeted for a management role in Calabar, given their strong regional interest and experience throughout Africa. The role of the Government regulator (NEPZA), in terms of licensing and monitoring private zones, its institutional relationship with the CEPZ, as well as the level of its funding of the CEPZ, should also be clarified.

- A capacity-building strategy is urgently required. "Thinking outside the box" of the CEPZA's current HR and capacity-building programs is clearly required at this stage. A full review of CEPZA's staffing and HR strategies is recommended.

4.1.7 Best Practices in Customs Processes

In a very competitive global environment, direct investments and other forms of capital movement are attracted to countries that offer efficient and simple administrative procedures. Investors eschew countries with excessively bureaucratic investment regimes because they typically involve high time and money costs. Fast paced production and delivery systems make efficient and simple customs procedures increasingly important to investors. Countries that are unable to provide predictable and efficient customs clearance processes attract less investment.

Some international standards concerning customs procedures include:

- Single, simple, and comprehensive declarations for goods and merchandise
- ASYCUDA
- ATA and TIR (temporary regime) carnets
- Harmonized System (HS) for goods classification
- Selective verification and use of scanner technology

- Anticipatory declaration filings
- "On-site" and Factory Clearance
- Advance Port and Customs payments and lines of credit
- Duty Free entry for samples
- A "Fast-Track" for clearance of certain types of goods
- Off-Port customs warehousing
- 24 hours/day and seven days/week clearance
- Guaranteed clearance in under 24 hours
- Interactive "EDI" Customs Declaration and clearance systems, allowing optimal use of computers and of the Internet in clearance procedures (including in transmission and processing of the Manifest, the Declaration, valuation, seizures, and so forth).

The following documents and treaties outline international customs norms and standards:

- *WCO international Agreement for the simplification and Harmonization of Customs Regulations (1974 as Revised in 1999)*
- *United Nations Agreement on the transportation of merchandise (1978)*
- *UN agreement on the responsibilities of the users of transport terminals in international commerce, (1991)*

4.1.7.1 Kyoto Convention Norms

In 1999 the World Customs Organization (WCO) revised the International Agreement for the Simplification and Harmonization of Customs Regulations of 1974. The WCO defined the norms and standards that each member country should establish in order to ensure predictability, efficiency, and security of global transfers. At the present time, the established norms comprise the following elements.

- Simplified, consistent regimes
- Regular application of and improvement to customs control techniques
- Maximum use of information technology
- Establishment of a spirit of cooperation between customs services and enterprises
- Use of risk management techniques (including risk assessment and selective inspection of goods)
- Use of electronic funds transfer
- Coordination with other agencies and organizations
- Easy accessibility to users of information, on legislation, rules, and procedures
- Establishment of a transparent system to settle customs disputes

4.1.7.2 Harmonized System

The detailed system for the description and coding of goods, commonly referred to as the *Harmonized System*, is a categorized nomenclature of products developed by the WCO. It comprises nearly 5,000 categories organized according to a logical and legal order. Each category is identified by a six-digit code. The definitions of each category are very precise and permit uniform, homogenous classification and treatment of goods.

Today, over 170 countries use this system as a basis for establishing tariffs and statistical collection of data. Over 98% of merchandise internationally traded is classified under the system. Governments, international organizations, and the private sector use

the *Harmonized System* to register and verify the flow of goods, taxes, and tariffs; to determine source of origin; to verify and regulate prices; and for GDP/GNP calculations.

4.1.7.3 Automated System for Customs Data (ASYCUDA)

International best practice indicates that computerized import and export procedures are highly effective in increasing transparency, reducing opportunities for corruption, and speeding the entire process. Many countries, in fact, are currently operating under a computerized customs management system: the Automated System for Customs Data (ASYCUDA). ASYCUDA represents a computerized system for improving customs procedures. ASYCUDA enables the computerization of manifests and customs declarations, as well as customs agency accounting procedures. In addition, the system manages transit and suspense procedures, and generates trade data for statistical economic analysis. More than 70 countries have adopted the ASYCUDA system, and 60 utilize it regularly.

While taking into account the International Organization of Standardization (ISO), World Customs Organization, and UN codes and international standards, ASYCUDA can be configured to specific national customs regimes and tariff legislation. Many countries have found the system's capacity for electronic data interchange between companies and customs officials particularly time and cost efficient.

International experience also suggests that the ASYCUDA system improves customs efficiency and increases company satisfaction with the investment process. The introduction of computerization and the subsequent procedural simplification minimizes administrative costs to the business community, and to the customs agency. In addition, numerous countries have benefited from the system's increased revenue collection: Because the system ensures consistent declaration and customs calculations, revenue collection is improved. Moreover, as a customs process byproduct, the system produces reliable trade and fiscal data -a foundation for better economic planning.

Countries functioning under the ASYCUDA system note that implementing and operating the system requires significant political commitment and constant system evaluation. Project activities are carried out in the following three phases: the preparation phase, the pilot implementation phase, and the roll-out phase.

- In the preparation phase a team of national and international advisors identify areas for reform: for instance, the introduction of international codes, the streamlining and simplification of clearance procedures, the alignment of forms to international standards, and the modernization of the national customs law. The government may implement some reforms immediately while others will occur over time.
- The pilot implementation phase includes the preparation of the national ASYCUDA configuration: coding tariff and related regulations and legislation, entering customs control data into the system, and preparing valuation and

selectivity systems. The government installs computers at pilot offices -- normally headquarters, an airport, a sea port, a land boundary and an inland clearance office. The reform activities initiated in phase one are continued as necessary.

- The national advisors can often implement the roll out phase with little or no assistance from international experts. This third phases involves site preparation – computerization. It also includes substantial training and the technical installation and support of computer systems in the identified sites.

4.1.7.4 ICC-WCO Standards for Customs System Quality

In 1996 the International Chamber of Commerce, in collaboration with the WCO, established a series Standard Practices Guides for the administration of international trade and transport. The standard practices represent guidelines for customs offices worldwide. Developing countries may find these standard practices useful in reforming customs procedures

The Chamber of Commerce and WCO's standard practices include the following elements:

1. Essential elements of shipment verification should be completed prior to goods arrival. Customs officials can verify administrative information after goods clearance.
2. If the importer has submitted his declaration prior to shipment arrival, port officials should assure immediate or rapid clearance.
3. Importers should be able to file manual or electronic declarations.
4. Customs inspection and discharge systems should allow the importer to receive goods prior to finalization of administrative requirements and duty payment.
5. Customs officials should apply WCO rules requiring immediate clearance irrespective of the weight, value, size, or means of transport.
6. Customs official should apply the free-entry regime for certain products, including documents, gifts, or samples which do not exceed a certain value or weight.
7. Customs authorities should regularly revise the exemption schedule.
8. The customs regime should allow the importer to complete declarations himself or through a licensed agent.
9. The customs system should deliver the importers goods to his transporter at the point of entry into the country. There should be no temporary transfer to a bonded warehouse.
10. The customs authorities should use statistical tables, based on calculated measurements and risk assessment, to target suspect shipments reducing physical inspections.
11. The customs regime should protect firm's cash-flow and profitability: for instance, by deferring taxes. Any such system must not compromise regulatory conformity and speedy clearance and delivery.
12. In the absence of fraud, customs officials should establish a reasonable time limit during which they may request additional or supplemental taxes or duties or the return to shipments to point of origin.
13. Customs officials should use scanners in completing their work.
14. Customs authorities should apply performance standards to verify if customs' procedures of inspection and clearance are completed in satisfactory time and respond to business needs.

15. Customs systems should allow registered importers to complete declarations periodically
16. Customs systems should allow good-faith importers to complete all formalities post-declaration instead of competing all formalities for each transaction.
17. Governments should establish legislation authorizing other official agencies to inspect cargo at the time of importation.
18. Customs systems should be operated on the basis of the commercial needs and the financial operational requirements of their clients. This may entail overtime or other systems and services, all financed on the basis of transparent costs negotiated with companies.

4.1.7.5 The Singapore Customs Standards

The Singapore Customs and Excise Department (CED) represents a world-class Customs Service. The Singapore Productivity and Standards Board awarded CED the ISO 9002 certification in August 1998. The certification represents excellence in cargo clearance, passenger clearance, and revenue collection. The following Singapore customs standards are the primary reasons for its world-class status:

- 80% of declarations approved within 3 minutes of transmission
- TradeNet permit amendment requests submitted by fax are processed and approved within 4 working hours of receipt
- Duty/VAT refund applications processed within 12 working days of receipt if no further verification required.
- Cargo clearance times, including waiting periods, if no secondary inspection required:
    - Road/Rail cargo - 90% within 10 minutes
    - Sea cargo - 90% within 8 minutes
    - Air cargo – 90% within 13 minutes
      Postal parcel – 90% within 13 minutes
- Applications for a licensed or bonded warehouse processed within 12 working days of receipt, if investor has furnished required information and supporting documents
- Processing and approval of written requests within 20 minutes of receipt
- 80% of the time, an officer dispatched within 1 hour of request
- 90-% of the time, supervised container unloading completed within 2.5 hours
- 90-% of the time, second issue of bonded stores (liquors and cigarettes) sent to vessel within 45 minutes of request
- Inquiry letter responded to within 7 working days of receipt, 80% of the time
- 80-% of the time, a passenger vehicle at Customs Checkpoints cleared within 4 minutes
- Passenger Clearance
  -Arriving by air – 95% within 5 minutes
  -Arriving by sea – 90% within 5 minutes
  -Arriving by road/rail – 90% within 5 minutes
- 95-% of the time, customs duty/VAT from air passenger assessed and collected within 10 minutes
- 95-% of the time, processing complete within 10 minutes

- 95-% of the time, goods bonding with a Warehouse Deposit Receipt issued within 10 minutes
- 95-% of the time, detained item released within 10 minutes
- 80-% of the time, Customs Service Center officers attend to passengers within 15 minutes of arrival

The Customs & Excise Department has a Quality Service Committee to monitor these service standards.

4.2 Export Incentives Procedures

Nigeria offers a number of export incentive programs, among them the Manufacture-in-Bond Scheme and the Duty-Drawback Scheme. These programs exist to attract investors to produce for export.

All MIBS and DDS applicants must be NEPC registered exporters. While investors apply for these schemes either through the Nigeria Export Promotion Council or the Ministry of Finance, only the latter administers the schemes.

4.2.1 Manufacture-in-Bond Scheme (MIBS)

The MIBS is based on *Decree No 18 of 1986 as amended by Decree No. 65 of 1992*. An export-promotion program, MIBS allows duty-free raw material; intermediate product; and machinery, equipment, and spare parts imports. Manufacturers must submit a bond [40] for 110% of the value of duties assessed, which is released after evidence of exportation and the repatriation of proceeds.[41] A recognized bank, insurance company, or NEXIM must issue the bond.

Bonded Manufacturing status allows firms to bring imported goods into their warehouses without paying import duty, use the goods in their production, and export the finished product. In most cases, companies can also import machinery, replacement parts, and other supplies duty free, and buy from domestic suppliers free of domestic excise, sales and other taxes. Customs authorities supervise MIBS factories; they check the bonded factory's import and export containers, or complete spot checks of factory inventories.

4.2.1.1 Approval Procedure

Step 1: Investor Submits MIBS Application and Detailed Letter

The investor sends a MIBS status request letter and application form NMIBS 1 (appended) to the Ministry of Finance's Fiscal Department. The letter includes details on the manufacturing activity: product; production levels; input/output coefficients; %age of production exported; plant description and production process; storage and delivery arrangements; and detailed factory layout, indicating the MIBS warehouse.

[40] Appended Form C 180A

[41] The Ministry of Finance has moved to a negotiable certificate form of refund rather than cash payments.

Step 2: MIBS Committee Conducts Inspection

The MIBS Committee visits the company site to complete a detailed inspection. MIBS Committee members include a NEPC representative, a Standards Organization of Nigeria (SON) representative, and a Nigeria Customs Service (NCS) representative. During the site visit, committee members focus on different issues: NCS inspects the MIBS scheme warehouse; NEPC considers value-added; and SON reviews product standards and input/output coefficients.

The committee completes a site visit when it has a minimum of 4 applications to consider. Typically, the committee conducts site visits every 1-2 months.

Step 3: Committee Members Prepare Site Visit Reports

After site inspection, each member prepares a report detailing his findings. He forwards the report to the Ministry of Finance.

Step 4: Committee Meets and Approves or Rejects MIBS Application

In a follow up committee meeting, the four organizations discuss the application and, where applicable, admit the company to MIBS. If committee members differ in opinion, they may request additional information from the investor.

It typically takes one month for Committee members to complete their reports and meet for a decision.

Step 5: Ministry of Finance Issues MIBS Enterprise Certificate

The Ministry of Finance issues an MIBS certificate. The Ministry also informs the Customs Service of the decision.

Manufacture-in-Bond Scheme Application and Approval Process

4.2.1.2 Utilization Procedure

When a company imports goods for the production of exports, it must mark all customs declarations (bill of entry, import duty report, clean report of findings, Form M) as MIBS. Customs officials will thereby transfer these goods directly to the warehouse premises. The importer provides the Customs Service with the required MIBS bond and customs subsequently clears the goods through the normal customs process. Customs Service's Federal Operations Unit then escorts the goods to the company's warehouse. A resident NCS officer monitors each MIBS Enterprise facility's imported input utilization.

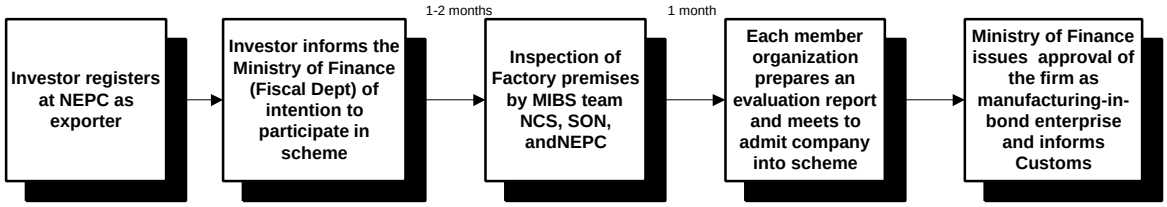
When the company exports goods, it informs the resident customs officer. The resident officer informs the Federal Operations Unit, which escorts the goods to the exit point and delivers them the NCS officers the goods are exported via standard export procedures. Once the company repatriates the proceeds, it informs the Customs Service with a confirmation of repatriation of proceeds from the Central Bank.[42] The Customs Service checks confirmation authenticity with the Central Bank and cancels the bond.

4.2.2 Duty Drawback Scheme (DDS)

Nigeria's Duty Drawback Scheme (DDS) also encourages export by refunding duties and surcharges on imports of raw materials inputs, including packing and packaging materials. The Duty Drawback Committee provides automatic 60 % refunds to qualified importers. As in the MIBS scheme, the importer must provide a bond covering 60% of the refund; the committee cancels the bond upon final processing of the exporter's claims

The Scheme provides fixed and individual drawback facilities. Exporters whose products are listed in the committee's "Fixed Drawback Schedule" participate in the fixed drawback scheme: typically when the import content of export products is largely constant, and when import prices – factored for exchange rate, tariff rates, and technology – are fixed. In such cases, the committee can calculate a standard Input-Output Coefficient Schedule (ICS) for certain products, on the basis of which a fixed drawback rate can be computed to be rabated per unit of export product.

Manufacture-in-Bond Scheme Application and Approval Process



4.2.2.1 Approval Procedure

Step 1: Investor Submits Application

The investor submits a Duty Drawback application within two years of the exportation date. To qualify for individual or fixed drawback, the investor must export the product within 18 months of importing the inputs. The investor obtains a Duty Drawback Rate/Refund Application Form NMIBS-2 (appended) from the Duty Drawback Secretariat or from NIPC Zonal offices. The investor completes the application and submits it to the NEPC Duty Drawback Committee with the following documents:

1) Three copies of the following import documents:

[42] Form NXB, appended

- Bill of Entry for Home use (Customs and Excise Form C 188) for the respective raw material inputs used for the export production;
- Import Bill of Lading for the raw material inputs used for the export production;
- Contract between the Trading Company and producer, where the Trading Company is applying for the facility; and
- Current Registration Certificate with NEPC.

2) Three copies of the following export documents:

- Export Bill of Entry for Non-Domestic Goods (Customs and Excise Form Sale 98);
- Form NXP;
- Bank certification of repatriation of foreign exchange proceeds; and
- Export summary schedule, providing information on product exported, value of export, and port of loading.

3) A Book Bond for 60% up-front payment, issued by a recognized bank or insurance company. The committee requires the Book Bond to guarantee the refund of any overpayment made to the exporter.

NEPC suggests the investor use a single application for all inputs used to produce a given export good. If an importer subdivides imported inputs included in a single import entry document, and subsequently uses the inputs in the production of more than one export consignment, he must include information on input production and balance remaining on the import entry document.

Step 2: Duty Drawback Committee Meets

The Duty Drawback Committee meets every 2 to 4 months, typically once it has 5-6 applications to consider. The committee evaluates each application and determines a drawback rate. SON establishes the input/output coefficient.

The committee sends its meeting minutes to the Ministry of Finance.

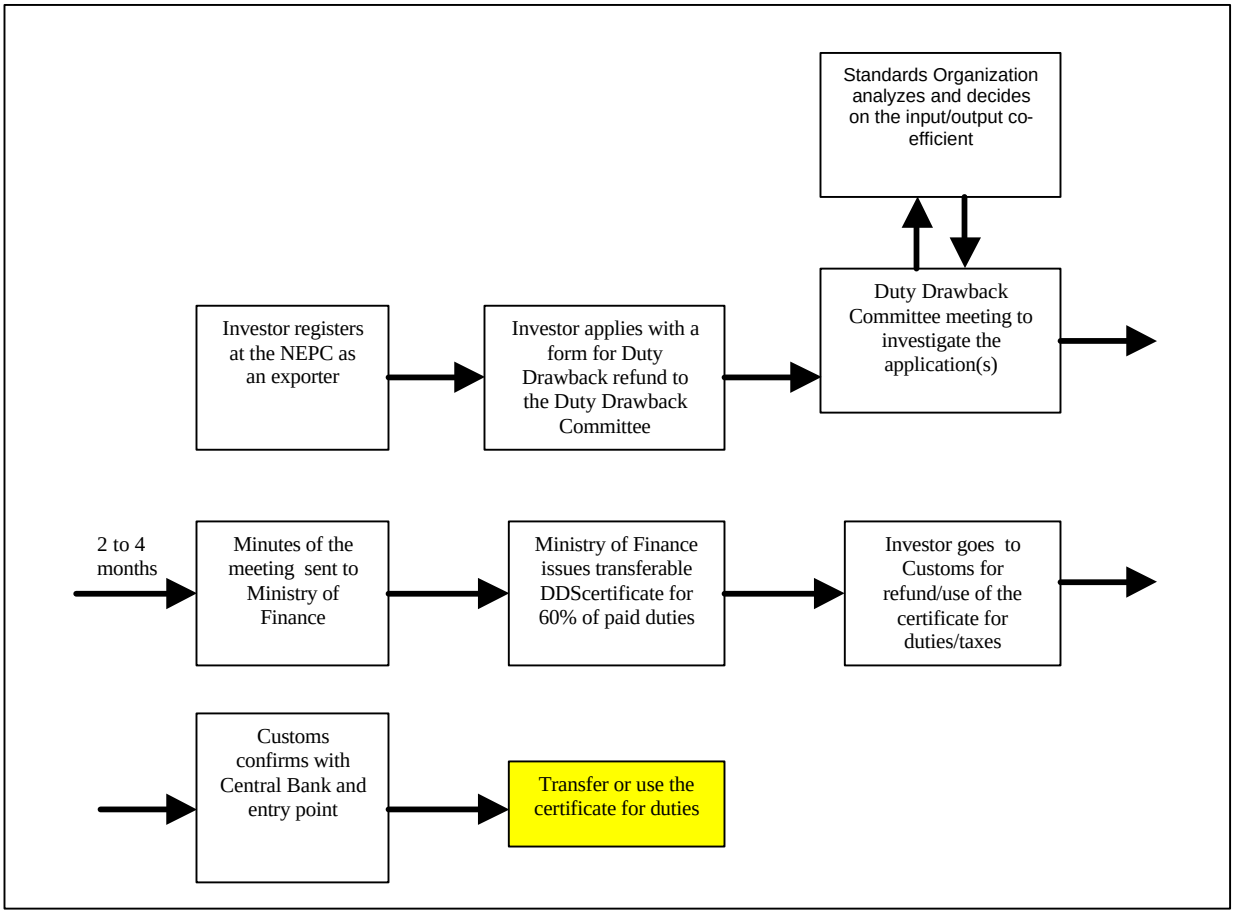
Step 3: Ministry of Finance Issues DDS Certificate

Either the Ministry of Finance Permanent Secretary or the NEPC Executive Director signs the certificate, making it official. The Ministry of Finance issues the investor the DDS Certificate.

4.2.2.2 Utilization Procedure

Once the Ministry of Finance has approved the DDS application and issues the certificate, the investor and other parties may transfer it three times – effectively using the certificate as a check in some cases. To use the certificate, a company must present it to NCS during import clearance. The Customs Service confirms the certificate's validity and verifies the import and export data with the respective entry points. The Customs Service also confirms foreign exchange repatriation with the Central Bank.

Duty Drawback Scheme Process



4.2.3 Analysis

- Nigeria's export incentives regime is administratively complex and thereby underutilized. Furthermore, the current MIBS and DDS schemes require the authorities to address policy issues.

- As noted in the analysis for Nigeria's tax incentive Pioneer Status program (Chapter 1: Business Registration), the country currently has no clearinghouse to provide clear and complete incentive information, application procedures, etc. The consulting team recommends that the NIPC house all incentive information, including all material relevant to the Manufacture-in-Bond and the Duty Drawback schemes.

- The consultants also previously indicated that Nigeria's incentive programs focus almost exclusively on the manufacturing sector. Service sector investors note that this is true of the MIBS and DDS programs. Throughout the world, the service sector is increasingly responsible for generating large cross-border income flows.

- MIBS and DDS schemes are generally used in economies where tariffs on imported material and equipment are relatively high and, thus penalize, exporters. There are second-best solutions as they provide means to exporters of manufactured goods to reduce the costs of their imported inputs. MIBS and DDS schemes are used in protected economies to provide manufacturing exporters imported inputs at world prices –increasing profitability, while maintaining the protection for domestic industries that compete with imports. The choice of export drawbacks is reinforced by international regulations, namely that GATT rules out the use of direct export subsidies, but allows the use of drawbacks. It should also be considered that DDS systems are not without costs/negative effects. However, Nigerian export incentives may require a detailed review to consider

Large Multinational Investor: "We submitted applications for DDS and Export Expansion Grants six months ago. The applications passed through several agencies and we are still waiting for approvals. We want to export more, but our working capital costs our increasing and competitiveness is declining."
Medium-Sized Foreign Investor: "We did not even try applying for any of the incentives. By the time we manage to obtain and facilitate them, it will be too late to benefit from them."
Large Foreign Investor: "We tried the DDS and stopped bothering about it. It took us two years to get refunds and by the time we received them, the value was already 50 % lower."
Domestic Freight Forwarding and Clearing Agent: "I don't know any investors who use the MIBS scheme. I don't think it works at all. I can only speculate as to the process. There must be some structure in place but a lot of us don't know how it works -Your guess is as good as mine- There is no visible structure on the ground for it to work."
Large Foreign Investor: "Getting MIBS status requires a visit to Abuja to file with the NEPC, and even then takes a year. Why bother can you can negotiate tariffs with Port Customs officials anyway?"

prospective problems with the WTO, negative impact of these incentives on the government budget, and other negative effects such as opportunities for cheating and abuse; administrative resources absorbed for its implementation; and inefficiencies in off-setting non-tariff barriers against imported inputs.

- Investors suggest that, while there have been some improvements, the MIBS and DDS schemes are cumbersome. In many cases, the Nigerian Customs Service does not cooperate and double or triple checks all documents and goods. NEPC, Ministry of Finance, and Committees approvals and inspections are overly centralized, generally insufficiently computerized, and slow. Investors also suggest that the refund mechanisms are particularly slow, effectively increasing their transaction costs.

4.2.4 Recommendations

Based on the above analysis, the consultants offer the following recommendations on improving Nigeria's incentives acquisition schemes:

- The consultants reiterate the recommendation made in the incentives section in Chapter I: the Nigerian Government should consider establishing a clearinghouse of investment incentive information and a web-based information site. This clearinghouse system could be established at the NIPC, the FIRS, or the NEPC. One relatively inexpensive solution would be to require all current government agency web sites to have useful foreign investment information. In addition, the Nigerian Government should establish a user-friendly central web site in multiple languages that provides all the necessary regulatory issues confronting foreign direct investors in the country. Australia offers a good model in this respect.[43]

- The consulting team further recommends that the Nigerian Government centralize MIBS administration under the Customs Service, and establish clear operating rules for both MIBS and DDS, reducing the current number of cross-checks. The MIBS Scheme would benefit from eliminating the involvement of several institutions currently involved in the process. Given that the Customs Service needs to work closely with the Ministry of Finance, the responsibility to approve applications and transactions for the Scheme should be consolidated under the Customs Service. This would eliminate several of the cross-checks that cause long delays in processing applications and actual transactions. However, it should be noted that such a move should be supported by capacity building efforts, to provide Customs with the necessary resources to improve and manage the system. The government should consult the Canadian Duty Deferral Program –outlined below– as an example of an effective, Customs-managed, duty drawback program. The Canadian Duty Deferral Program operates under clear management, qualification, and procedural guidelines. Moreover, one agency handles most of the program's functions.

- The Nigerian Government should conduct a review of the current export incentives. Such a review would help to consider prospective problems with the

[43] See:http://www.dist.gov.au/invest

WTO, the negative impact of these incentives on the government budget, and other possible negative effects such as the:

- Opportunity for cheating and abuse;
- Absorption of administrative resources for its implementation; and
- Ineffectiveness in offsetting non-tariff barriers against imported inputs.

- The consultants suggest that the government enable MIBS enterprises to connect to the NCS ASYCUDA system network if they so choose.

4.2.5 Best Practices in Duty Drawback[44]

A duty exemption system exempts exporters from paying duties or indirect taxes on imports used in export production. The exemptions are granted at the time of importation. A duty drawback system refunds duties and indirect taxes exporters have paid on imported inputs, after they complete the exports. The two ways of making such refunds is through individual drawbacks and fixed drawbacks.

Overall, duty drawback schemes have not worked well, mainly due to the inability of administrations to repay duties prepaid by exporters a number of African countries have this problem. Several exemption schemes have failed in Sub-Saharan Africa for reasons of trust and capacity, cumbersome procedures, and because the costs from delays and paperwork outweigh the duty reductions. Nevertheless, several good schemes exist internationally:

4.2.5.1 Korea's Duty Exemption and Drawback Schemes

Korea's export incentive system is based on pragmatic, quick, and flexible policy-making. The government successfully monitors results and adjusts policy in response.

Until the mid-1970s, Korea successfully used a duty and indirect tax exemption system. The system offered investors unrestricted choice between imported and domestically produced inputs. Moreover, it offered indirect and direct exporters equal access to duty-free imports and other export incentives. Under the policy, indirect exporters gained free trade status, resulting in efficient backward linkages. Korea achieved administrative efficiency through two main instruments:

- Pre-tabulated and published physical input-output coefficients; and
- Trade financing procedures and documents for duty-free imports.

When balance of payments problems worsened following the first oil crisis, the government switched to a drawback system, with measures to guarantee tariff-free status. Importers of intermediate inputs used in exports were in most cases allowed to defer paying tariffs for considerable periods.

By 1980, under Korea's then combined fixed/individual drawback system, only about 20 % of Korea's exports were subject to the fixed drawback system. The Korean

[44] Source: World Bank; Rhee (1985).

government thus implemented a new drawback schedule in 1981. Under the new system, exporters rely on individual drawbacks for major imported input items for each export product, based on input-output coefficients listed in a drawback schedule. At the end of 1982, the Administration published six volumes consolidating all the technical input-output information. The government publishes an updated schedule every six months. Fixed drawbacks are applied only to miscellaneous imported items. This new system appears to have a good balance: providing tariff-free status for major imported items and administrative simplicity for miscellaneous imported items.

Korea has continued to streamline its Input Coefficient Administration (ICA). The ICA - embracing banks, provincial governments, and the Office of Industrial Promotion in the Ministry of Commerce and Industry- estimates, updates, publishes, and administers input coefficients for most export commodities.

4.2.5.2 Taiwan's Duty Rebate Scheme

Since 1955, Taiwan has had an import duty and indirect tax rebate scheme to assist producers of manufactured exports. A firm that is a major manufacturer-exporter is allowed to put its duty liabilities "on account," to be canceled against evidence of subsequent exports. Firms must provide a bank guarantee that the duty plus penalties will be paid if the exports are not produced within eighteen months. The customs administration reimburses or cancels an exporter's duties upon presentation of documentation showing export, and appropriate disposition of foreign exchange proceeds. The customs administration handles more than half a million rebate applications a year with a staff of 200.

Either the direct exporter or one indirect exporter collects the entire rebate. The indirect exporter can collect the rebate only if the direct exporter signs over the necessary documents. Often, a large supplier of inputs dependent on imported raw materials systematically acquires these documents from its small exporter customers and collects the rebates. Typically, it sells to direct exporters (or extends credit to them) at a duty free price, but it also requires a postdated check covering the duty. This check is returned un-cashed once the exporting firm signs over its documents. Rebates on new products are calculated on a case-by-case basis, whereas rebates for established products are determined on the basis of published fixed rates. Both methods involve the systematic application by customs rebate officials of pre-established input-output coefficients.

To export a product not previously exported, an exporter must obtain an export license and a list of the product's physical input-output coefficients. To work out the coefficients, government staff or consultants visit the factory, inspect its records, and examine or test the product. Government staff certify the list and give it to the customs administration within a month of the exporter's application. To obtain a rebate, the exporter must provide evidence on the source and quantity of all imported and dutiable inputs used. To save administrative time, any input valued at less than 1% of the value (FOB) of the exported product is dropped from the calculation of the rebate. Once a product has had a long enough production history for its input and output coefficients to be fairly stable, it is switched over to the fixed-rate method. To work out the fixed rebate, the customs administration calculates the duties rebated on all inputs (direct or indirect) into the product over the previous twelve months compared with the combined value or volume of the corresponding exports for all makers of the product. The result is a standard rate

based on value or on a physical unit such as weight. Where technical processes and input coefficients of different firms vary widely, their exports are defined as different products with their own fixed rates. Fixed rates on about 6,000 products are published each July, reflecting annual changes in prices, duties, and sources of inputs.

Once a fixed rate is in effect, exporters receive the stipulated amount of rebate only after providing evidence that they (directly or indirectly) paid duties and indirect taxes equal to that amount. Otherwise, they receive rebates equal only to the amount they actually paid. However, details are no longer examined. If an exporting firm shows that its actual payments were more than 20% higher than the standard rebate, and it can give good reasons why it needs these extra imported inputs, it can apply to an interagency committee for a redefinition of its export as a separate product, eligible for a higher rebate. Taiwan partly dismantled this system, along with protective tariffs, in the mid-1980s.

4.2.5.3 Canada's Duty Deferral Program

The Canadian Duty Deferral Program is designed to allow importers, producers, and exporters to either relieve or defer the payment of import duties under certain circumstances. The program has two options: Duties Relief Program; or Bonded Warehouse Program. Goods may move freely between the two program options.

4.2.5.3.1 Duties Relief Program

Under the Duties Relief Program, importers do not pay duty (whether customs, countervailing, or anti-dumping duties), VAT,[45] or excise taxes on imported goods that will eventually be re-exported – either in the same condition, as an expended input, or as a final product input. The amount of relief becomes payable once the goods are no longer intended for exportation.

Participation in the Duties Relief Program requires the completion of an application. When completed, the application is submitted to the closest Revenue Authority Trade Administration Service Office. The Department will review the application and schedule a visit to the applicant's premises to ensure there are adequate records and mechanisms in place to control the goods while they are in country. Government debtors are not authorized to participate under the program. An application for relief may be made by any importer or exporter of goods, or the processor, owner or producer of those goods between the time of their direct shipment to Canada and their export or deemed export.

Once authorized by the Department, a unique certificate number will be issued. When importing goods under this program, the certificate number has to be given on the Customs Coding Form. The number also identifies eligible participants when purchasing

[45] Although VAT is not relieved under the Duties Relief Program, it is available through the Exporter of Processing Services (EOPS) program. The EOPS program relieves the VAT at the time of importation when goods are imported to undergo a processing service and to be re-exported. The company must export the goods within four years. To qualify for EOPS, the importer cannot own a property interest in the goods and cannot be closely related to the non-resident on whose behalf the work is done.

goods domestically from other participants. The goods must be exported within 4-5 years of the date of release of the goods.

On the application for Duties Relief, qualifying firms are required to identify the type of records they maintain. Program participants must be able to track all receipts, activities, and movement of goods included under the program. These records must be sufficient to enable an audit, as periodic audits are conducted to monitor compliance, subject to advance notice. Failure to keep adequate records may result in the a monetary penalty and possible ejection from the program.

An application shall be accompanied by proof of export in the form of:

(a) A customs document presented to an officer of the customs administration of the country where the repair, addition of equipment or work was performed respecting the importation of the goods into that country;
(b) A document of a transportation company respecting the export of the goods;
(c) A written statement made by the exporter in the country where the work was performed stating that the goods exported from Canada are the goods that were imported into that country for repair, the addition of equipment or work; or
(d) Pther documentation that establishes that the goods were exported.

The Customs Tariff specifies when goods are deemed to be exported because, while the goods may not have physically left the country, they are intended for export. Some examples are goods placed in a bonded warehouse for export or supplied to a duty-free shop.

When the imported goods no longer qualify for Duties Relief, an adjustment request must be filed and duties paid. Examples of non-qualifying use include a sale in the National Customs Territory and goods that are no longer for export. Related duty payments must be received by the Department within 90 days from the date the goods no longer qualify. If the imported goods qualify for a refund, drawback or some other form of relief or remission, no duties are owed. However, the goods must be reported, specifying how they qualify for the relief, remission, refund or drawback.

4.2.5.3.2 Bonded Warehouse Program

Customs Bonded Warehouses are licensed and regulated facilities operated by the private sector. Goods in a bonded warehouse are considered to be imported but not released from customs. Imported and domestic goods destined for export may be placed in a bonded warehouse. These facilities provide for the complete deferral of customs duties, anti-dumping and countervailing duties, excise duties and taxes, including VAT. This deferral continues up to the point the goods are released for domestic consumption or exported. This program benefits persons who import goods into Canada and wish to: defer the payment of duties until the goods are released for domestic consumption; consolidate imported and domestic goods for export; or import goods temporarily for display at conventions, exhibitions or trade shows. The goods in a bonded warehouse may not be manipulated, altered or combined with other goods.

The prospective operator must present a fully completed application form to the customs office closest to the warehouse location. Forms and other related information are available at local customs offices. Officers from the local customs office review the

application and request any additional information. A visit to the applicant's premises is scheduled to review the proposed site and record-keeping system to ensure that the goods are secure and readily identifiable through records. When the proposed operator has met the requirements of the program, a Customs Bonded Warehouse license with a unique license number is issued, subject to, payment of the requisite fees and security deposits. The program participant must abide by certain requirements with respect to facilities and equipment, personnel, physical security, records, and operation and maintenance standards.

Participants' record-keeping system must track the movement of all goods in the bonded warehouse. Revenue Canada makes every effort to utilize participants' own record-keeping system to avoid unnecessary duplication of records. Periodic verifications are conducted to monitor compliance. Verifications are be based on risk analysis and are conducted at least once per year. Failure to keep adequate records results in monetary penalties and, in the case of continued non-compliance, possible suspension and/or cancellation of license. Goods must be situated in the area designated on an approved site plan.

The security to be posted is based on risk analysis factors such as type of goods, operators' financial and compliance profile.

Goods for display at conventions and exhibitions and for marking purposes may be stored in a bonded warehouse for no more than 90 days. In general, goods must be removed from the warehouse within four (4) years of the date they entered . Other goods, such as liquor and tobacco products, have a five (5)year time limit. Spare parts for heavy equipment and industrial machinery may be stored in a bonded warehouse for up to 15 years. There are provisions under the *Customs Act* for extensions of these time limits if it is deemed necessary.

All permits or certificates are required to be presented when the goods enter the warehouse. Prohibited goods or restricted goods without permits are not permitted in a bonded warehouse.

Imported goods with duty paid or imported under the Duties Relief Program may enter into a bonded warehouse. Upon entry, the goods are considered to be exported and eligible for drawback.

Chapter 5: Resolution of Commercial Disputes

Establishment of the Rule of Law is a fundamental underpinning condition for a modern market economy and for the attraction of foreign investment. While Nigeria's commercial disputes resolution system is composed of indigenous, Sharia, and "received" Courts, there are few problems in terms of dueling decisions, appeals, and rules of Court. Judicial accountability, access to legal services, and access to case law are likewise all also improving. However, the system remains hobbled by extremely slow case processing, a lack of practitioner specialization in commercial law topics, and infant Alternative Dispute Resolution mechanisms. This chapter will focus on these issues, providing analysis and recommendations for improvement.

5.1 Procedure

Nigeria has two distinct Court systems:

1) The "Indigenous" Court System

2) The "Received" British Court System, which itself breaks down as follows:
    - Magistrates Courts (with jurisdiction over civil and criminal matters), with several geographic managerial divisions per State
    - State High Courts (with jurisdiction over civil, commercial and criminal matters), with several geographic judicial divisions per State
    - Federal High Courts, with 12 judicial divisions (each encompassing 2-3 States)
    - Courts of Appeal, with the same 12 judicial divisions as the Federal High Courts (Court of Appeal Divisions include: Lagos; Enugu; Kaduna; Benin; Ibadan; Jos; Port Harcourt; Ilorin; Abuja; and Calabar)
    - Supreme Court, located in Abuja

The Courts also include:[46]

- The High Court of the Federal Capital Territory of Abuja
- The Sharia Court of Appeal of the Federal Capital Territory of Abuja
- Customary Courts of Appeal
- Code of Conduct Tribunal
- National Assembly and Legislative House Election Tribunals

Under the *1999 Constitution* and the *Federal High Court Act*, the appropriate forum for resolution of a commercial dispute is determined based upon the nature of the case, the amount at issue, and the geographic location of the parties and/or transaction. Review of administrative decisions and application of administrative law occurs in the Common

[46] Nigerian Constitution, Art. 6(4), 245(1), 246(1)

Law Courts system. Jurisdictions are clearly delimited according to a clear track and there is no risk of dueling judgments.

The Courts of Appeal have original jurisdiction for the following appeals of the decisions of High Courts:[47]

- Decisions where they were sitting as the first instance
- Decisions appealed on the basis of questions of Law or of the application of the Constitution
- Decisions involving the liberty of a person
- Decisions involving creditors
- Decisions of admiralty determining ability
- Decisions of the Sharia Court of Appeal on questions of Islamic or personal Law
- Decisions of Customary Courts of Appeal on questions of Customary Law
- Decisions of the Code of Conduct Tribunal
- Decisions of Election Tribunals

The Federal High Court has exclusive original jurisdiction in the following matters:[48]

- Government revenue matters
- Customs & Excise, and claims against the Nigerian Customs Service
- Banking and Finance, and Bankruptcy and Insolvency
- Matters arising from the Companies and Allied Matters Act
- Intellectual property and competition
- Ports, Admiralty, Carriage by sea, and Aviation
- Citizenship and immigration
- Diplomatic and trade representation
- Arms, munitions, and explosives
- Drugs and poisons
- Weights and Measures
- Matters relating to the Federal Government
- Administrative and Executive Actions

The Supreme Court has original jurisdiction for the following matters:[49]

- Disputes between one State and another or the Federal Government
- Appeals from the Courts of Appeal on questions of Law or on the application of the Constitution
- Questions relating to the offices of the President or Vice-President

The Government may not enact any law which removes any jurisdiction of the Courts under the Law[50]. However, the National Assembly and State-level House Assemblies may establish new Courts[51].

The Rules of Court for filing cases are clear, as are the applicable forms. Rules of Practice and Procedure also exist for the Supreme Court and the Federal High Court.[52]

[47] Nigerian Constitution, Art. 241(1), 242(2), 244(1), 245 (1), 246(1)
[48] Nigerian Constitution, Art. 251
[49] Nigerian Constitution, Art. 232(2) and 233(2)
[50] Nigerian Constitution, Art. 4(8)
[51] Nigerian Constitution, Art. 6(4)

The Courts consistently apply these rules. Furthermore, these Rules are fairly uniform throughout the various States in the country, as they are based on the *Uniform Civil Procedure Rules* formulated by the Nigerian Bar Association.

Practitioners have access to recent Case Law through a series of fairly comprehensive Law Reports, published weekly both by the Courts themselves (e.g., the *Ministry of Justice and Federal High Court Report*) and by private organizations. Those produced by private organizations are based on certified copies of judgments and other official Court records, available upon request at the Libraries of Court or at the Court Registrars' Offices, as well as on the records of the Nigerian Law School and Institute of Legal Studies, and are relied upon and accepted in Court.

Alternative Dispute Resolution (ADR) referral systems exist as well. A good model law on ADR, providing straightforward arbitration mechanisms, was adopted in 1989. ADR is often conducted under the auspices of the Lagos Chamber of Commerce or the Nigerian Arbitration Institute. For international contracts, arbitration under the London Court of the International Chamber of Commerce (ICC) is formally an option. However, in practice, only the largest companies make use of these arbitration forums.

[52] Nigerian Constitution, Art. 236, 254

5.2 International Practice

Economic development agencies as well as governments of the industrialized nations have emphasized, across the world, the following principle: "Government must provide both the institutional framework and the requisite infrastructure to allow business to operate in an environment of open, competitive markets. Coherent legislative and judiciary systems constitute the essential elements of such a structure."[53] Establishment of the Rule of Law is, for some, the most fundamental condition underpinning a modern market economy.

Numerous studies over the past ten (10) years[54], including by such eminent economists as Dr. Mancur Olson, have demonstrated a powerful causal link between an effective, appropriate judicial system and economic growth. The consulting team subscribes wholeheartedly to this conclusion. Our company stands firmly behind the efforts of USAID, FIAS, and other donors in the developing countries to promote transparent, effective legal systems and institutions that respond to society's needs. Good governance is critical to economic growth.

In its protection of business and contractual rights, the judiciary must be impartial and credible before society and the investment community. The consequence of a system viewed as unfair and lacking in credibility can be seen in Indonesia's relatively failure in the late 1990s to meet the country's financial crisis, since in Indonesia the government was considered a guaranteed victor in any litigation against a third party.[55] From the standpoint of investment promotion, transparency and equity in the judicial system are essential elements. To stimulate economic growth through private investment, commercial justice must be effective and speedy as well as non-discriminatory.

Reform of Law School and University curricula, Law Society admission criteria, legislative drafting and codification efforts' quality, ADR frameworks, and civic education are also all critical to economic modernization.

[53] Dougals Webb, *Legal and Institutional Reform Strategy and Implementation –A World Bank Perspective,* World Bank/USAID (14 September 1999)
[54] USAID, *Plenary Session: Practitioner's Input and Recent LIR Experience* (14 September 1999)
[55] Prof. Gary Goodpaster, *Law and Development in Indonesia,* University of California (1999)

5.3 Analysis

- The litigation process in Nigeria is extremely slow. Unless a case goes to settlement, is undisputed, or is extremely straightforward, most cases take at least 1-2 years to be resolved. According to the private sector, the Courts' backlog of cases means that it takes an average 3-5 years for a case to be heard the Court of first instance. A recent intellectual property case took six (6) years to get resolved. Property matters are notoriously slow, dragging on for periods of up to 30 years in some instances. Just getting a hearing takes six (6) months. All of this is due to several factors:

  1) The human element
  2) The caseload before the Courts system
  3) The absence of judges on the Court's travel circuit
  4) The abuse of the technicalities of the system by the litigants
  5) The Seniority-based pleading system
  6) The absence of Court stenographers and resulting obligation for Judges to write their decisions in long-hand
  7) The traditional Court dress requirements of the wig and gown, in the context of extreme heat
  8) The absence of electricity in the Courtroom
  9) The absence of computerization

  According to Barristers consulted, although few cases are settled, perhaps 90% of potential cases never enter the legal system in the first case, due to concerns over delays. There is widespread consensus as to the fact that the issue of delays is the principal problem with resolution of commercial disputes in Nigeria. One investor simply called the system "a mess."

- Lagos State is attempting to redress the situation, by instituting proper electricity, computer, and stenographic infrastructure in its Courthouses. According to the legal community, its results in addressing the time factor in judicial decisions is being carefully, albeit only officiously, observed as a test case by other State Governments.

- Another problem relates to the ignorance of specialized commercial topics by barristers, solicitors, and magistrates alike. Training of the Auxiliaries of Justice, including bailiffs and Court Clerks, is also poor. On the other hand, Nigerian justices are viewed as fairly capable and competent, and resourceful at dealing with the constraints in their operating environment. All must have at least ten (10) years' practice before the Courts and be recommended for appointment by the State Judicial Services Commission. Furthermore, some continuing education is on offer, such as the Annual Conference of Judges Admiralty Law Seminar. The Bar Association is also very strong in this area.

- One investor at a NESG-sponsored event stated that the current oath and perjury systems are unrealistic in terms of assuring all litigants' and witnesses' truthfulness, as they are not grounded in Nigerian animistic or Muslim traditions.

- Investors view the Government's Law enforcement capacity as weak and the Rule of Law as still hampered by the "Rule of Persons." One private sector businessperson, formerly in the Government, stated that Nigerian Law enforcement capacity is weak, principally because of the absence of targeted enforcement mechanisms. However, Barristers consulted expressed the belief that enforcement is improving, particularly as regards contracts, even with respect to Administrative Law decisions involving the Government as a litigant. Furthermore, the use of specialists including Private Investigators, Security Firms, and Loss Adjusters is allowed in Nigeria, in order to track down litigants with enforceable obligations under judicial decisions.

- Overall, Law and Order is improving. Corruption is fairly contained in the Nigerian Courts since the transition to the civilian administration. The ability to influence Judges is contained by the Court Assignment System. Furthermore, the recusing procedure works well, when applied for (by request to the Chief Judge). Weekend and night-time decisions have been discontinued, and all major decisions are published. In addition, the National Judicial Council supervises all Judges from the High Court level upwards and makes an effort to ensure accountability. It should also be noted that all State High Court Judges are appointed by the State Governor upon recommendation by the State Judicial Services Commission. Judges must be appointed by the Federal and State level Executive on the recommendation of the National Judicial Council, depending on the specific bench.[56] They must be qualified legal practitioners with 10-15 years experience, depending on the specific bench.[57] On some benches, Islamic law qualifications are also required.[58]

- Legal services in more remote States are also improving, with most medium and large law firms in the country having offices in 2-3 States, and relationships and capabilities throughout most of the country.

- Alternative Dispute Resolution (ADR) is however still in its infancy in Nigeria. One investor stated that arbitration is quick and straightforward, and its decisions devoid of any external factors or influences. That company puts a standard arbitration clause in all of its contracts. According to specialized Barristers consulted, such investors are the exception that confirms the rule. By and large, it would seem, businesspeople are not conscious of ADR's advantages and prefer going to Court, as they feel more secure in their ability to enforce Court decisions.

[56] Nigerian Constitution, Art. 231(1), 238(1), 250(1), 256(2), 261(3)a), 271(1)-(2)
[57] Nigerian Constitution, Art. 231(3), 238(3), 250(3), 261(3)a), 271(3)
[58] Nigerian Constitution, Art. 261(3) and 288(1)

5.4 Recommendations

In order to improve the quality of commercial dispute resolution in Nigeria, the consulting team recommends the following measures:

- Judicial, Barrister and Solicitor training through continuous education on specialized legal topics related to commerce, as well as through seminar series, exposure tours to foreign jurisdictions, and exchange programs
- Training of Judges in the use of computers
- Making available all Official Gazette and legal decision collections at each Courthouse
- Creating an electronic/internet Nigerian legal database for accessing laws, Court decisions, procedural models, and professional legal services
- Encouraging the publication of textbooks on Nigerian legal doctrine and jurisprudence
- Creating dedicated training programs, professional orders, and Codes of Ethics for Court Clerks and Bailiffs
- Equipping all Nigerian Courthouses with stand-by generators, telephones, fax machines, typewriters and/or personal computers, and stenographic and filing systems, following Lagos State's lead in this area
- Abolishing the wig, as has been done in such other Common Law jurisdictions as Canada and the United States
- Offering the option of "affirmation," or swearing on the Qur'an, rather than the standard Bible-based oath currently in use
- Organizing a public awareness campaign and training on ADR mechanisms, targeted at the business and professional legal services communities
- Creating Commercial Courts to alleviate the caseload pressure and delays in resolving commercial disputes

Chapter 6. Taxation

This chapter provides an overview of fiscal federalism in Nigeria and of the Nigerian taxation system in general, as well as the state-level monthly income tax payment and annual income tax filing processes because investors must typically complete these processes on behalf of their employees. It finally takes a cursory look at local government taxation.

While centrally coordinated to some degree, Nigeria's system is one of fiscal federalism, with federal, State, and Local Government taxes and roles, as well as transfer payments known as "Federal Allocation Allowances."

The system is relatively reasonable and competitive by design, both in terms of fiscal pressures and tax administration procedures. The monthly payment and annual filing of employee income taxes, for instance, appears neither particularly difficult nor cumbersome.

However, State auditing and collection practices are also less than ideal, while Local Government taxation and collection practices are, to all intents and purposes, predatory. Overall, the system remains relatively opaque. Corruption exists both in terms of transfer payment misappropriation and in incentives administration. Clearer and more transparent systems, as well as better information dissemination, will be critical to improving this situation.

Detailed discussion, analysis, and recommendations will be offered on each of these issues throughout the chapter.

6.1 Federal Taxation

6.1.1 Overview

According to the Nigerian Constitution and the *Taxes and Levies (Approved List for Collection) Decree No. 21 (1961, as amended in 1998) A281*,[59] the Federal, State and Local Governments are each responsible for the collection of some taxes. According to specialized tax attorneys consulted, under Article 315 of the Constitution, any amendments to the *Taxes and Levies Act* and of the associated responsibilities of the Joint Tax Board are however areas of exclusive federal jurisdiction.

The Federal Government is also, amongst others, responsible for collecting the following taxes:[60]

- Companies income tax
- Companies and non-resident withholding tax
- Capital Gains tax on companies, non-residents and FCT residents
- Company Stamp Duties

[59] Hereinafter the "Taxes and Levies Act"
[60] Taxes and Levies Act, Schedules, Part I

- Personal income taxes of civil servants

In the non-petroleum sector, foreign investors are particularly interested in the following taxes: company income, personal income, capital gains, value-added (VAT), and withholding. Investors must also consider education tax and stamp duties in their financial projections.

Nigeria charges a 30% corporate tax. Manufacturing companies, and those engaged in agricultural production, pay a 20% company tax for the first five years of operations. Businesses incorporated in Nigeria pay tax on profits accumulated anywhere in the world; foreign firms pay on profits derived from operations in Nigeria only. Nonresident foreign companies pay a "deemed" tax of 30% on an *estimated* or deemed profit of 20% of annual gross income.

The government levies personal income tax on all persons considered residents for the fiscal year. Treatment of residents and non-residents differs. A resident is anyone domiciled in Nigeria for 180 days in a year. Residents are taxed on all income brought into Nigeria, whatever the source; nonresidents are taxed only on income derived from Nigeria. For personal income derived from employment, employers are required to deduct and remit the relevant taxes. This is known as the P.A.Y.E.—Pay As You Earn—scheme. P.A.Y.E. tax is imposed by the federal government but collected by the states on behalf of the federal authority.

Withholding tax should not be confused with its counterpart in the U.S. U.S. withholding is the equivalent of the Nigerian employee P.A.Y.E. tax. In Nigeria, withholding refers to taxes held and paid by persons who have paid rent, interest, fees, royalties, and dividends. In Nigeria, any person who receives professional services is obligated to withhold a percentage of the value of the services. This ranges from 2.5-10%, according to the classification of the service. Consulting services, for example, are taxed at 5%. If an individual or a firm retains an attorney, the retaining person must withhold, declare, and pay the appropriate tax on the attorney's fees. This withholding is largely limited to services. The government established withholding tax in part to capture tax owed by non-resident foreign firms or individuals who have rendered service in Nigeria.

Capital gains taxes apply to gains realized from the disposal of assets by both resident and nonresident individuals. These assets may be within or outside of Nigeria, but for nonresidents only the amount of gain brought into Nigeria is taxable. Federal authorities tax corporate capital gains. State authorities, on the other hand, tax individual capital gains. Interestingly, the government does not tax capital gains derived from stock sales and company shares.

The government levies a flat 5% VAT on goods and services. Exported goods and services are VAT-exempt. All Nigerian companies providing goods and services must register with the Federal Board of Inland Revenue and pay VAT returns monthly. Nonresident companies must also include the tax in their invoices; these companies cannot recover the VAT paid on their inputs.

The following table provides a list of taxes approved by the Joint Tax Board for collection at the several tiers of government. These taxes and levies are based on the constitution and the tax codes and are prescribed by law. The table is amply representative but not wholly exhaustive.

Systemic Overview

Federal	State	Local
• Corporate income • Withholding for companies • Petroleum profits • VAT • Education tax • Capital gains: Corporate and Abuja residents • Stamp duties for corporations • Personal income with respect to: a) Armed Forces b) Police c) Abuja residents d) External affairs e) Non-residents	• Personal income • Withholding for individuals • Capital gains for individuals • Stamp duties (individuals) • Lotteries, Gaming, Casinos • Road taxes • Business premises registration • Street naming fee in state capitals • Right of occupancy fees: State capitals • Markets involving state finances	• Shops and kiosks • Tenement rates • Liquor licenses • Marriage registration • Birth and obituary certificates • Signboard/Advertisement permits • Right of Occupancy fees • Parking violations charges • Sewage, refuse disposal fees • Market/motor park fees • Cattle tax • Burial ground permits • Bicycle, Cart, Truck fees

Nigerian tax revenues are chiefly collected by the Federal Government and redistributed according to a special allocation formula, under which States and Local Governments receive "Federal Allocation" payments from Abuja. The Federal Board of Inland Revenue administers Nigeria's fiscal system. The Federal Inland Revenue Service is the Board's operational branch. It imposes taxes at three levels: federal, state, and local governments. The Joint Tax Board coordinates state taxes and ensures that taxes do not overlap and are not redundant.[61] Some taxes, such as capital gains, appear to be assessed at multiple levels. A close examination, however, reveals that the government does not collect redundant taxes. A new fiscal force, coordinated by the President and involving the Federal Ministry of Finance, relevant para-statals, Justice and the police, will be established and operational by August 2001 at the latest. It will be governed by a special Act and aim to ensure proper enforcement of fiscal policy.[62]

Finally, it should be noted that the various above-discussed taxes need not necessarily apply to every investor. A number of fiscal incentives are available to investors in Nigeria, including the "Pioneers Status,"[63] the Duty Drawback (DDS) Scheme, and the Manufacturing In Bond (MIBS) Scheme.[64]

6.1.2 Analysis

The tax system of Nigeria is, like many other components of the country's investment framework, in theory, relatively reasonable by design. The consultants believe that the taxation rates are reasonable and competitive by international standards -and lower than in either the U.S. or the UK. Furthermore, Nigeria compares fairly well with international taxation theory and models. It abides by IASC standards, it has a Single Unified Tax form, and through the *Taxes and Levies Act* has attempted to unify and harmonize local taxation. All government levels attempt to ensure high tax collection rates. The federal government uses the Federal Board of Inland Inspection, and the states use their own

[61] Contrast this system to that of the U.S., where federal, state, and local authorities often tax personal as well as corporate income.

[62] "New fiscal policy proposal promises fresh job opportunities," *The Guardian*, 01/30/01, p. 27

[63] See above, Chapter 1: Business Registration.

[64] See above, Chapter 4: Import and Export Procedures.

employees, private consultants, and private firms. Municipal governments also use such means. A number of sources of non-competitiveness nevertheless exist, including the following:

- There is considerable debate, within Nigeria, concerning fiscal federalism and the equitable allocation of federal resources. The Southeast continues to complain about marginalization in terms of participation in Government and budgetary allocations. Lagos State too is seeking what its Finance Commissioner, Mr. Olawale Edun, termed "full legality, full constitutionality in the treatment of federally collected revenue."[65] According to President Obasanjo, most Local Council Chairmen share the Federal Allocation payments between themselves and their local councilors. This has been evidenced by a series of recent events in Lagos, Maidiguri, Enugi, Minna, Ibadan, Jos, Sokoto, Port Harcourt, Oshogbo, and Onitsha. Ineffective local government bosses help themselves to millions of Naira in this fashion. Justice Mustapha Akanbi, Head of the Anti-Corruption Commission has stated that many local government chairmen should be tried and incarcerated for the statutory term of ten (10 years).[66]

- Chartered accountants and auditors consulted expressed the view that tax legislation is generally poorly drafted, vague, and opaque. Tax legislation falls into many different codes. Although these codes are not collected in any single official tome, only the private legal and accounting firms have put them into a consolidated volume.

- Chartered accountants and auditors consulted furthermore felt that information dissemination (both of informational leaflets and of legislation), training of tax collectors, and enforcement were inadequate.

- While Nigeria has a public assistance service and an appeals process for taxpayers, neither functions well.

- Double taxation exists. Thus far, Nigeria has formalized treaties with just seven (7) foreign states: the UK, Canada, France, Romania, the Netherlands, Belgium, and Pakistan. It has as yet established no tax treaty with the U.S.

[65] "Lagos seeks IMF, World Bank assistance in federal allocation," *The Comet*, 01/30/01, p. 32
[66] "Councils of Fraud," *This Day*, Vol. 6, No. 2113, pp. 12-13

The following issues affect Nigeria's fiscal incentives schemes:

- The incentive system is unclear and complicated. Although FIRS or the Ministry or Finance appear to administer most incentives, several other agencies are involved. Given the uncertainty of the incentive system, the consultants are surprised investors do not offer greater criticism. The consultants believe that, despite numerous incentives, most investors do not bother applying for them, or pursue a "negotiated" incentive program. The system's numerous bottlenecks – while designed to reduce unofficial investor abuse – prevent serious investors from benefiting.

- Currently, Nigeria has no central clearing-house to provide clear and complete incentive information, application procedures, etc.

- This complicated, labor-intensive system favors large companies that can afford facilitation services. The system is disadvantageous to SMEs –the type of companies most likely to provide new products and services and offer employment opportunities.

- Because the current system is not transparent, it encourages corruption.

- Service sector investors note that the Nigerian incentive programs focus almost exclusively on the manufacturing sector, ignoring service sector investment. In addition, the system discriminates between foreign and domestic investors. This is particularly ironic since the service sector has created dynamic economic growth throughout the developed world and is increasingly responsible for generating large cross-border income inflows from foreign clients.

- Finally, just as is true of its taxation system in general, Nigeria's complicated and discretionary incentives program is operated with inadequate staff and systems support.

6.1.3 Recommendations

Based on the above analysis, the consultants offer the following recommendations on improving Nigeria's taxation and fiscal incentives schemes:

- Greater anti-corruption efforts against Local Government Councils by the Joint Tax Board should be exercised.

- Nigeria's tax legislation and regulations should be codified and a proper Tax Code adopted.

- Federal and State BIR tax assessors, auditors, and collectors should be trained in the legislative basis for their work, as well as in customer service.

- Tax and fiscal incentives information should be made widely available, in both written and electronic format.

- Nigeria should negotiate more non-dual-taxation agreements with its major trade and investment partners, including the U.S.

- Nigeria should simplify its incentives system in order to improve the attractiveness of the business environment since the investment location decisions of multinational companies are influenced more by simplicity in incentive regimes than by larger incentives based upon opaque criteria. A simplified system would also ease the burden of administration by tax and other authorities. The Nigerian Government may want to consider performing a full-scale analysis of options for reform, including estimates of both the revenue effects and the effective tax burdens of different possibilities. Such a study would analyze the investment incentive scheme in Nigeria, the marginal effective tax rates for different types of investments resulting from existing incentives, and the impact of these incentives on the government budget.

- Nigeria should develop a transparent national investment incentive policy. The most effective remedy to the current complex incentive regime would be a national investment incentive policy that strictly and clearly regulates what the federal government, individual states, and municipalities can offer. The incentive scheme should be automatic, performance based, and awarded against transparent and consistent criteria. Such a policy must provide uniform and transparent rules and be easily accessible to foreign investors in the major languages of the international business community.

- The incentive scheme should be focused. The Government should limit the objectives placed on an investment incentive scheme and the choice of instruments utilized to reach those objectives. To do otherwise invariably introduces an unwarranted and unsustainable complexity to the scheme, which in and of itself leads to inequitable delivery and inefficient administration, increases free rides and decreases the value of the incentive to the investor. Further, the more targets assigned to the incentive system, the less likely the system is to achieve any target, in a meaningful sense, let alone all of them; Tax incentives tend to induce diverse and often unpredictable distortions in an economy, a factor often overlooked in their design. The best way of reducing these distortions and inducing the desired response is by selecting instruments that act as directly as possible. Thus a policy maker should target a tax base for an incentive that is most closely related to the desired effect.

6.2 State-Level Taxation

6.2.1 Overview

State BIRs are much less involved with businesses than is the Federal Board. The latter taxes corporate income, capital gains for companies, company withholding, and stamp duties for corporations. States —by law— cannot replicate these levies. They tax personal income, withholding, and capital gains. Withholding comprises professional services, rents, dividends, and directors' fees. Because they tax personal income, the State Boards are concerned with employees and wages. The State Government is however, amongst others, responsible for collecting all of the following taxes:[67]

State Government Taxes

- Personal Income Tax in respect of:
  - Pay-As-You-Earn (PAYE)
  - Direct Taxation (self-assessment)
- Withholding Tax (individuals only)
- Capital Gains Tax (individuals only)
- Stamp duties on instruments executed by individuals
- Pools betting and lotteries, gaming and casino taxes
- Road Taxes
- Business premises registration fee in respect of
  Urban Areas as defined by each state, maximum of:
  - N10,000 for registration
  - N5,000 per annum for renewal of registration

  Rural Areas
  - N2,000 for registration
  - N1,000 per annum for renewal of registration
- Development levy (individuals only): No more than N100 per annum on all taxable individuals
- Naming of street registration fees in the state capital
- Right of occupancy fees on lands owned by the state government in urban areas
- Market taxes and levies where state finance is involved

6.2.2 State Monthly Income Tax Payment Procedure

The consulting team explored the income tax monthly payment and annual filing procedures in Rivers, Plateau, and Kaduna States. The process by which employers register employees fro income tax deductions, which precedes payment and filing, is covered in Chapter 3: Employing (above).

Step 1: Monthly Paycheck Deductions

After a company has registered to pay taxes on behalf of its employees and to file an annual company tax return, it must make monthly deduction payments to the Board of

[67] Taxes and Levies Act, Schedules, Part II

Inland Revenue. The company deducts the allowed amount of money from each employee's paycheck.

Step 2: Monthly Income Tax Payments to the Board of Inland Revenue (BIR)

The company submits a payment on behalf of all employees to the P.A.Y.E. window at any of a number of designated banks. BIR personnel staff these windows on behalf of the agency. It should be noted that the monthly deductions should be paid into the bank within a month from when the deduction is made otherwise the company will incur a penalty.

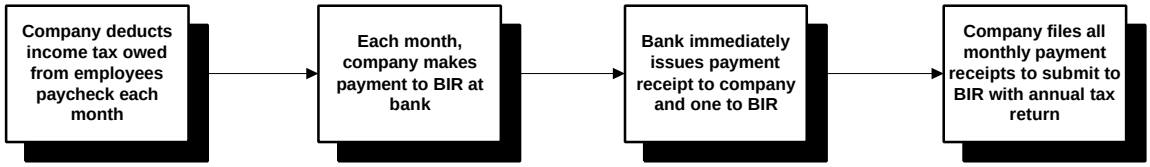
Step 3: Bank Issues Receipt of Payment to Company

The bank issues a receipt of payment to the company. One copy goes directly to the Board of Inland Revenue, and another copy is given to the company,

Step 4: Company Files All Monthly Receipts to Submit with Annual Tax Return

The company files all monthly payment receipts in its accounting office. The company will submit copies of all these payment receipts with its annual tax return.

Monthly Income Tax Payment Procedures



6.2.3 Annual Income Tax Filing Procedure

Step 1: BIR Public Announcement that Filing Forms are Available/Announces Audit Schedule

At the beginning of each calendar year, the BIR invites company representatives to pick up that year's income tax filing forms. The forms are only available at the BIR office. At the same time, BIR announces its auditing schedule for the year.

Step 2: Company Visits BIR to Obtain Annual Filing Forms

A company representative must visit the BIR office to obtain the requisite filing forms for the particular year.[68] The forms are only available at the State BIR office.

Step 3: Company Submits Tax Returns for Each Employee

The company submits to BIR a complete deduction card for each employee. The deduction cards show the amount of money deducted from an employee's paycheck

[68] Kaduna State Personal Income Tax Return appended

each month and paid as income tax to the BIR. The company sends the original of each employee's completed monthly form to the BIR. At the same time, the company submits a P.A.Y.E. Form[69] that shows all of a company's employees' deductions.

Tax returns must be filed with the BIR between January 1 and March 31 of every year.

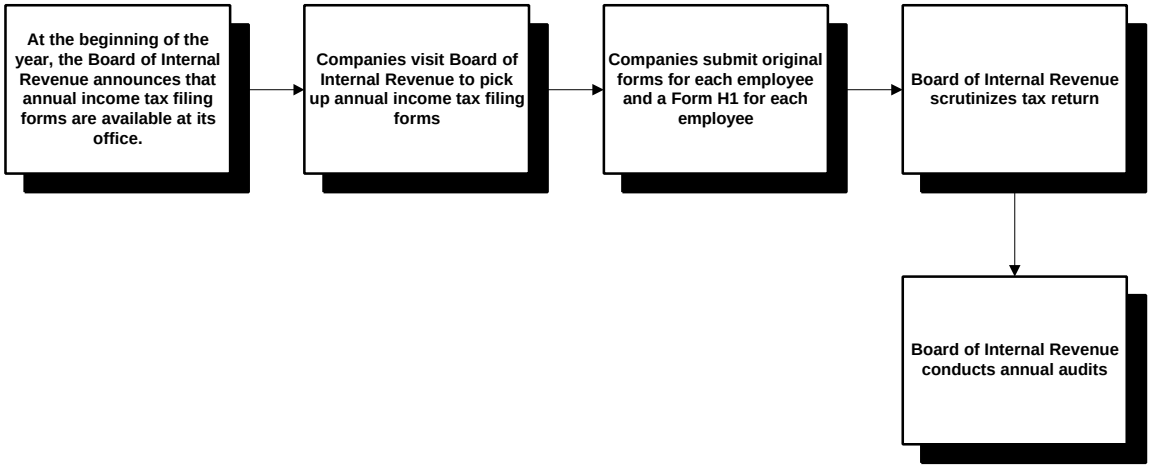
Step 4: BIR scrutinizes the returns

BIR staff go through the company's tax return, and check the monthly payment receipts the company has submitted against the receipt copies the bank has submitted directly to the BIR. If there are no errors or inconsistencies, the process is complete. If there are inconsistencies, BIR contacts the company for verification.

Step 5: BIR Conducts Annual Audits

BIR audits each of Port Harcourt's 4,000 registered companies every year; BIR conducts audits whether or not there is suspicion of a filing error. In addition to these scheduled audits, BIR staff conducts daily routine audits on an unannounced basis. The daily, random audits are much less comprehensive than the annual, scheduled audits.

Annual Income Tax Filing Procedures



6.2.4 Analysis

The monthly payment and annual filing of employee income taxes does not appear difficult or cumbersome. Companies did not note the income tax process as an investment discouragement. Some of the Nigerian system's aspects are even quite competitive by international standards. While each Nigerian State has a unique tax declaration form, thanks to Joint Tax Board Efforts, the state forms are more consistent than those of the US states. Nevertheless, several issues should be pointed out:

- The Joint Tax Board has clarified the limitations and authorities of the three tiers of fiscal services in Nigerian society. The parameters are clear. It becomes the

[69] Rivers State Form H1 appended

responsibility of Federal authorities to ensure compliance at all levels. Unfortunately, at a time in which social and religious dissension are putting the federation itself under trial, this recommendation is not simple to implement.

- In Rivers State, the Board of Inland Revenue told the consulting team that states gain all income taxes; none accrue to the federal government except those paid by members of the armed forces and residents of the Federal Capital Territory of Abuja. However, all other sources, including the federal tax authorities, explain that the state Boards of Inland Revenue collect employee income tax on behalf of the federal government. It is somewhat disconcerting that state tax officials are unfamiliar with basic fiscal policy.

- A view of the taxpayer as a "client" or "customer" of the BIR is severely lacking in most states. The Plateau State BIR's physical premises and general observable environment re more appropriate for a police station than a line agency (although the senior official who received the team, was welcoming, knowledgeable, and informative). What gives rise to concerns is that the role of the BIR seems less clear than that of other agencies. Even more disconcerting was a statement made by one civil servant that there remains "a crude way of getting what we want in Nigeria." This expression was meant to characterize fiscal aggressions of both the state and local governments.

- Few jurisdictions internationally require that companies file for their employees. This can be very costly for an investor, both in terms of time and financial resources.

- Companies can only procure annual filing forms directly from the Board of Inland Revenue office. Since this is a state agency, representing enterprises statewide, all companies must travel to the State capital to obtain annual tax filing forms. Since the agency is generally not computerized and neither are many of the small and medium sized enterprises in the State, the Board of Inland Revenue has not considered making forms available electronically.

- In the case of the Plateau State BIR at least, the physical premises and general observable environment reminded the consultants more of a small-town Third-World police station than a line agency (the senior official who received the team, however, was welcoming, knowledgeable, and informative). Likewise, the Kaduna BIR was, at first, the only organ of that State's government hesitant to speak with visitors—potential investors—without a formal letter of introduction addressed to the BIR Chairman. Only after the consultants fully explained their mission, and assured the BIR that they only sought routine and publicly available information, were BIR personnel more forthcoming. The attitude of welcoming and encouraging investors was less evident than at other State institutions. It is likely that the BIR sees itself as downstream in the business process and not engaged in the authorizations for matriculation of firms. Nevertheless, this attitude is troubling.

- Another potential bottleneck in the income tax process comes from the inordinate number of audits the State Boards of Inland Revenue conduct. According to the Rivers State Board, fewer than thirty-seven employees tackle well over 4,000

audits each year, which must leave the office severely understaffed on a daily basis. The Board's declared auditing process seems inefficient at best and well beyond the means of the staff, at worst. There appears to be no correlation between payment/filing errors and audits conducted. The Board does not necessarily investigate those companies that file suspicious or faulty returns; instead, the Board audits all registered companies annually. This is a poor use of agency staff and limited resources. Indeed, the Board has only two vehicles: one which is the sole domain of the Board chairman, and the other which must be shared among numerous auditing teams on any given day. Apparently, staff must frequently rely on public transport, or vehicle or motorbike taxis to arrive at audit sites.

Investors in Abia State indicated that the state tax authority does not perform annual scheduled audits. Instead, bi-yearly audits are more typical. The investors also explained that random audits are no longer part of the system – they may have occurred during military rule to intimidate or to procure "fines"; however, they no longer occur.

The consulting team finds it disconcerting that one state claims to carry out comprehensive – indeed, unnecessary – audits every year, while another state does not. Moreover, the States' auditing systems are onerous for investors, who potentially face annual scheduled audits and periodic unscheduled audits, regardless of the company size. Companies must prepare for audits, and spend valuable time making documents and staff available to assist auditors. Annual audits could be a significant investment deterrent, especially since they serve no real purpose.

- The State Boards of Inland Revenue also miss significant income tax collection potential because of security risks, and lack of transport. The Rivers State Board estimates that approximately 100,000 small companies or individual proprietors fall outside of its reach. These investors do not register with the Board, but Board employees cannot visit them to encourage registration and payment – there is no transport and there is no security. Most of these companies would be paying taxes under the direct assessment system. The state tax authorities – and subsequently the federal government – are foregoing a potentially significant amount of revenue if 100,000 small companies or individual proprietors fall through cracks in the collection system.

6.2.5 Recommendations

- Following international best practice, the consultants also recommend that all Boards of Inland Revenue in Nigeria transfer the filing burden from the company to the employee.

- The consulting team recommends that each state Board of Inland Revenue publish a tax registration guide for that state. The guide should cover all processes that an investor must complete to comply with state tax registration requirements. Moreover, the guide should serve both investors and tax authority personnel. Since Rivers State Board of Inland Revenue personnel misquoted federal tax policy, the consulting team feels that both staff and investors need

clarification on tax policies and regulations. The guide should include all relevant forms, which can be detached.

- The consulting team recommends that the State taxation agencies make tax forms available at other places throughout the state: for instance, at other state government agencies and local government offices. The agencies should also consider making forms available electronically when their offices are computerized.

- The consulting team recommends that the State Boards of Inland Revenue adjust their auditing policies. There is little need for annual audits of all operating companies. Instead, the Boards should conduct some random audits, but the bulk of audits should be performed when fraud is suspected. The Boards should consult international auditing norms to learn how to detect possible fraud in employee income tax payments.

- As is, the Rivers State Board of Inland Revenue, at least, is incapable of capturing significant employee income tax revenue. The consulting team suspects that this problem is not unique to Rivers State. The team suggests prioritizing collection from the numerous small companies and individual proprietorships that currently operating outside the tax system.

- Investors pay many taxes at different times and in different places. To decrease the time burden investors face, tax authorities should consolidate the myriad taxes. Moreover, taxes should be paid in a central location, and at only a couple of times in a month or a year, depending on the particular tax.

- The consulting team recommends that the federal government establish and make known a policy regarding employee income tax requirements for Nigerians working in free zones. Currently, there appears to be considerable confusion over the requirements and exemptions.

- The consulting team recommends strategic “visioning” and mission statement-crafting exercises, as well as customer service training, for all State BIR personnel.

- Finally, the consultants recommend serious consideration be given to making means of transportation available to BIR auditing staff.

6.3 Local Government Taxation

6.3.1 Overview

Local governments are considered the third tier for taxation. Some of the legitimate areas in which they can impose taxes, duties and levies, in accordance with the decrees of the Joint Tax Board, are: [70]

Local Government Taxes

- Shops and Kiosk rates
- Tenement rates
- On and off liquor license rates
- Slaughter slab rates
- Marriage, birth, and death registration fees
- Naming of street registration fee, excluding any street in the state capital
- Right of occupancy fees on lands in rural areas excluding those collectable by federal and state governments
- Market taxes and levies excluding any market where state finance is involved
- Motor park levies
- Domestic animal license fees
- Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck
- Cattle tax payable by cattle farmers
- Merriment and road closure levy
- Radio and television license fees (other than for radio and television transmitter)
- Vehicle radio license fees (imposed by the local government of the state in which the car is registered)
- Wrong parking charges
- Public inconvenience, sewage, and refuse disposal fees
- Customary burial ground permit fees
- Religious places establishment permit fees
- Signboard and advertisement permit fees

There is also a measure of concurrent State-Local jurisdiction in the collection of taxes, fees and/or rates, subject to State Law.[71]

The consultants interviewed two officials from the Kaduna South Local Government in an effort to better understand issues of local taxation. The official with responsibilities in the area of taxation explained that, in reality, they have three principal categories of revenue from levies and taxes:

- The first is property or tenement rates, which are assessed at one percent the value of the company's gross income.[72]

[70] Taxes and Levies Act, Schedules, Part III
[71] Nigerian Constitution, Second Schedule, Part II, Article 9
[72] Demand Notes for Property Tax and Plot Dues, appended

- The second category is the business permit. The amount of this tax, according to the official, is also assessed at roughly one percent of the gross revenues of the company. After the first year, rates are much lower. Kaduna Local Government (KLG) explained that a local textile company pays approximately N350,000 annually. KLG also claimed that other municipal governments charge a much higher rate: 9% in Abuja, 5% in Kano.

- The third category is ground rates.

6.3.2 Analysis

It is in seeking revenue that local governments are most aggressive. Several issues bear noting in this regard:

- The numerous local taxes that companies are required to pay throughout Nigeria are an extremely serious issue. Investors indicated that the tax payment timing is inefficient and burdensome – all the taxes are assessed and paid at different times throughout the year. Company personnel are constantly traveling to and from the filing stations making tax payments. The local taxes are particularly problematic because local government authorities continue to add new taxes, in an effort to raise revenue as a body, or as individuals. The current trend is a vehicle tax for each municipality.

- The foreign as well as the domestic investor also face municipal taxes and levies. While there appear to be few problems with redundant taxation between the states and the federal government—there are some aberrations in land fees—municipal governments have shown little restraint in following legislated standards and often attempt to tax business in ways proscribed by the Joint Tax Board. They have no constitutional or other legal right to do so, but they have been in many instances refractory about conforming to regulations. Local governments in Nigeria enjoy a degree of autonomy that is proving occasionally intractable to the federal authorities' efforts to curtail. In no area is this quasi or even extra-legal independence more salient than in the fiscal domain.

- Municipal assessment is far from standard and presents a special range of issues. According to sources interviewed by the consultants, there are some 120 levies and taxes relating to roads & transportation, sanitation, and the environment, applied to businesses operating in the East, South-South, and Delta areas. Investors claimed that few of these rules were codified. In one investor's words: "You can't just go to a library or a lawyer and clear things up." According to solicitors, many of these local taxes are *ultra vires.* Investors claim that there is nevertheless much Local Government harassment and intimidation as part of their "revenue drives."

- Local governments enjoy power and proximity. Hungry for revenues, they have a reputation for behaving at times in an almost predatory manner, and they are said not to be above attempting double taxation, that is, duplicating a levy already assessed by the state or federal authorities. In other words, they occasionally behave in ways not legitimized by the Constitution, and it is in this manner that they combine a certain informality with their local power. All

investors—local or out-of-state Nigerians and foreigners alike—must learn to deal with these entities, and the art of working with them demands knowledge of the laws and flexibility. The federal and state authorities must find an equilibrium between desirable local autonomy and necessary enforcement of the limits of decentralization. Nigerian authorities are aware of the challenge and working towards its resolution. Their efforts have been set back in recent times by calls for increased local and regional autonomy by ethnic and religious groups.

6.3.3 Recommendations

The consultants recommend the following measures in order to ameliorate the current situation surrounding Local Government taxation in Nigeria:

- The principal solution on offer for bringing to heel the Local Government Councils in the context of their excessive and *ultra vires* use of powers rests in a more vigilant enforcement, by the Joint Tax Board, of the *Taxes and Levies Act*.

- Furthermore, all Local Governments should be required to publish, and gazette their Local Ordinances and By-laws, and disseminate them adequately (perhaps through such media as the local press). Non-published by-laws should have no legal validity.

6.4 International Practice

6.4.1 Programs Aimed at Improving the Administration-Enterprise Environment

A number of countries, such as the US, Canada and Ireland, provide tax information via the internet. Ireland's *Order of Income* website provides an important customer service, because it improves efficiency and ease of registration. A number of countries also provide telephone assistance for tax information and forms. The Irish tax authority – the Income Order – has for instance instituted measures to improve customer service and at the same time to increase both time and cost efficiency for the agency and for investors. All agency offices guarantee that investors will be served within ten minutes of arriving at the office. Similary, the authority guarantees that operators will respond to telephone inquiries within thirty seconds.

6.4.2 Simplification and Harmonization of the Local Taxation

Several countries have double taxation systems: That of the national government and of the regional or municipal government. Since municipal taxes tend to be low, those of the central government constitute the most significant direct taxation. Because tax rates may differ by region, an enterprise in one state or province may face substantially different taxation rates than a company located in another state or province. German provinces, for instance, have tax regimes that differ by up to 10 percent.

National authorities must coordinate state or provincial taxation activities and those of the local tax authorities to assure consistent fiscal registration and tax payment processing. Close coordination among municipal, regional and national authorities enables easy entry by new municipalities. Cooperation requires that each government regularly share information, and that each adopt a unique identification tax. Canada, the US, Germany and Denmark are examples of international best practice in tax authority coordination.

6.4.3 Rational Tax Incentives

Based on international experience, tax incentives may be said to have the following benefits:

- Tax holidays provide large up-front benefits for start up companies that can start earning profits immediately.

- Tax holidays are primarily beneficial to firms that are either relatively mobile or short-term in nature. More specifically, tax holiday provisions tend to attract "footloose industries" that can move from one location to another, taking advantage of the most lucrative short-term incentives a country can offer. Such investments are often labor intensive.

- As interest deductions are of no value to firms qualifying for tax holidays, firms are less encouraged to use debt financing and this can act to lower the risk of corporate bankruptcy.

Furthermore, based on international experience, tax incentives may be said to have the following disadvantages:

- The implementation of tax holidays requires careful monitoring by the government and therefore added administrative costs for compliance by the recipient firm.

- As firms deduct depreciation costs during the tax holiday period, long-term investments are discriminated against in favor of short-lived capital. As tax holidays tend to attract footloose industries, they tend to discourage firms from undertaking substantially long term investments. This tends to bias investment away from high technology and high-value added activities.

- Tax holidays can easily lead to large revenue losses for governments. Revenue losses can occur from profitable firms not paying taxes during the tax holiday term, firms that abuse the system by closing and re-opening under a new name and registration, and also as a result of arbitrage transfer pricing schemes that allow horizontally and vertically integrated firms to minimize total corporate taxes.

- For US and Japanese multinationals qualifying for tax holidays, it is often the case that the value of the firm's tax holiday benefit will be added to their home tax liabilities, requiring an additional tax payment to the US or Japanese tax authorities. In these cases, the taxpayers in the host countries (those offering the tax holidays) would be subsidizing the treasuries of the US and Japan, rather than the investor, and the country in any event fails to attract the US and Japanese firms.

- Tax holidays inevitably create distortions between firms that qualify for incentives and those that do not. Older firms, even those that are making new investments to upgrade or expand operations, are forced to compete with start-ups who will enjoy the benefits of the tax holiday. Firms just below the minimum capital requirement are disadvantaged vis-à-vis firms just over the minimum capital requirement. Such arbitrary criteria create economic distortions that interfere with the normal functioning of the capital market and therefore reduce efficiency and overall competitiveness.

- Screening for eligibility almost inevitably involves a degree of discretion on the part of the authorities. Such discretion opens the possibility of corruption in decision-making, and indeed the track record of tax holidays is that they are often associated with corruption and kickbacks.

International Practice in Tax Incentives

Within the vast array of incentives on offer, many take the form of tax holidays. International experience shows that these, in particular, are often not just ineffective, but also capable of imposing significant costs on a country. Empirical evidence indicates that tax holidays affect the investment decisions of only a small percentage of foreign investors, mainly export-oriented companies.

One convincing demonstration of the ineffectiveness of tax holidays occurred in Indonesia. Before 1984, Indonesia offered the usual array of tax holidays, amounting to as many as six tax-free years. In 1984, Indonesia moved to a corporate tax rate of 35% and abolished all tax incentives. In spite of official fears, foreign investment grew more rapidly than it had under the incentive system. Investors responded to policy reforms that made Indonesia a more attractive investment destination.

Overall, the redundancy rate for tax holidays is high: Governments award incentives to investors who would have come anyway; this imposes real costs on the host country in the form of foregone tax revenues. Rough estimates suggest that typical tax holidays in developing countries represent the equivalent a 100% subsidy. Attempts to reduce tax holiday redundancy rates through discretionary award have generally failed. Local politics often requires these incentives to be extended to domestic firms also (who would actually invest without them), because the awarding agency is rarely in a position to make the necessary analysis, and because discretionary procedures of this kind regularly lead to corruption.

Despite the considerable evidence that the costs of incentives outweigh the benefits, many developing countries justify the continued use of tax holidays on various grounds.

The country's corporate tax rate is too high: Lowering the corporate tax rate would be a preferable solution in this situation.

Frustration at the difficulty of making substantive policy reforms: Tax holidays are relatively easy to introduce, and appear "costless." Meanwhile, reducing red tape, eliminating domestic ownership requirements, and providing adequate infrastructure, for example, require more effort: however, Tax holidays do not offset these negative factors in the investment environment, and do impose costs on the country. Policy improvements, meanwhile, benefit domestic foreign and domestic firms more or less equally.

The need to attract a few high profile investors: the idea is that the attraction of a few "big fish" will indicate that the investment environment has improved, and serve as a magnet for other investors. Such a strategy might work if the investment environment has dramatically improved, and if the holidays are offered for only a short period.

Overall, given the above, tax incentives with the following characteristics have been deemed the most effective and/or least harmful, based on international experience:

- Properly targeted and Well defined
- Transparent
- Simple and Practical to administer

- Non-discretionary/Automatic

6.4.4 Simplified Tax Accounting, Reporting, and Filing Standards

International experience indicates that simplified and transparent accounting considerably impacts business' operations and investment environment. Companies operating under a clear and simple accounting system are better able to evaluate risk and capital costs. In addition, "best practice" accounting systems provide increased transparency and credibility in taxation. According to M. Arthur Levitt, Executive Officer of the US Securities and Exchange Commission (SEC): "Any accounting standards looking for a global acceptability must be established... on the basis of the investor needs... [for] credible information… [and] transparent reporting."[73]

The International Accounting Standards ("IAS") provide a useful guide for developing countries. The IASC has developed a full set of standards, including in the following areas:

- General Income Tax
- Turnover
- Cash flow balance sheets
- Inventory
- Depreciation
- Quarterly losses and profits
- Financial statement disclosure and presentation
- Fixed assets
- Provisions, assets and contingent liabilities
- Profits
- Temporary financial reporting

The IASC seeks to ensure improved international accounting standards. Given market globalization, consistent international accounting standards –rather than a simple harmonization- are increasingly important. IASC has assessed alternative accounting models and established "best practice" standards in the interests of investors. According to M. Michael Sutton, Chief Accountant of the SEC: "I believe it is important to stress that the efforts of IASC and IOSCO have, to date, contributed considerably to upgrading international accounting standards and bringing the standards into line with accounting practices in countries with developed capital markets... We will continue to encourage IASC to develop international standards that encourage transparency, harmonization and the level of disclosure investors expect... "[74]

During its December 1996[75] Ministerial Meeting in Singapore, the WTO also announced its support for IASC. Moreover, Sir Bryan Carlsberg, IASC Secretary General, recently predicted a future global convergence of accounting standards. He noted in *Global*

[73] Levitts, Arthur, "The Importance of High Quality Accounting Standards", *Remarks before the International American Development Bank* (29 September 1997)
[74] Suttons, Michael H., "Current Developments in Financial Reporting, *AICPA 1997 National Conference on Current SED Developments*, Washington (9 December 1997)
[75] Pacter, Paul, "International Accounting Standards: The World's Standard by 2002," *The CPA Journal* (July 1998)

Emerging Markets, that soon "it will become unsustainable to have different national and international standards."[76]

[76] Interview with Sir Bryan Carlsberg, *Global Emerging Markets* (March 1997)